SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 395

RICHFIELD OIL CORPORATION, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[fols. 1-3] Citation in usual form, omitted in printing.

[fol. 4] [File endorsement omitted]

UNITED STATES OF AMERICA, Plaintiff,

v.

RICHFIELD OIL CORPORATION, Defendant

COMPLAINT—Filed April 30, 1947

The United States of America, seeking equitable relief by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against defendant, Richfield Oil Corporation, and complains and alleges as follows:

Jurisdiction and Venue

1. This Complaint is filed and these proceedings are instituted against defendant under Section 4 of the Act of Congress of July 2, 1890, as amended (26 Stat. 209; 15 U. S. C. §4), entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Antitrust Act, and under Section 5 of the Act of Congress of October 15, 1914, as amended (38 Stat. 736; 15 U. S. C. § 25), commonly known as the Clayton Act, in order to prevent and restrain continuing violations, as hereinafter alleged, of Section 1 of the Sherman Antitrust Act and Section 3 of the Clayton Act.

[fol. 5] 2. Richfield Oil Corporation has an office, transacts business, and is found within the Central Division of the Southern District of California. The alleged violations of law hereinafter described have been and are being carried out in part within the Central Division of the Southern District of California.

Defendant

3. Richfield Oil Corporation (hereinafter referred to as "Richfield"), which is made a defendant herein, is a corporation organized and exsting under the laws of the State of Delaware, with offices and its principal place of business in Los Angeles, California. Richfield is engaged in the business of acquiring and developing oil reserves and in producing, transporting, refining, and marketing petroleum and petroleum products therefrom in the States of California, Oregon, Washington, Nevada, Idaho, Arizona, Texas and New Mexico.

Definitions

4. The term "petroleum products" as used herein refers to those products that are obtained or manufactured from crude oil by refining and various other processes and sold or used as a fuel or lubricant for automotive vehicles, and includes gasoline, automotive lubricating oils, greases and various other miscellaneous special-purpose oils and compounds.

5. The term "automotive accessories" as used herein refers to replacement parts and articles, other than petroleum products, that are sold or used in servicing or repairing automotive vehicles, and includes tires, tubes, batteries, spark plugs, oil filters, fan belts, battery cables, auto lamp bulbs, fuses, windshield wiper blades, tire repair and vulcanizing kits, antifreeze, tire chains, and other like items.

6. The term "service station" as used herein, unless otherwise indicated, refers to a retail outlet dealing in and [fol. 6] dispensing Richfield petroleum products and/or automotive accessories.

7. The term "independent service station operator" as used herein refers to the operator of a service station who is not an employee of defendant and includes the operator of a service station of which the defendant may be the owner or senior-interest holder of the property leased by such operator.

8. The term "sponsored products" as used herein refers to those petroleum products and/or automotive accessories not manufactured or produced by defendant Richfield, but sold and distributed at service stations, the sale and dis-

tribution of which are handled by or arranged for at service stations by defendant Richfield.

9. The term "TBA distributor" (an abbreviation for a tire, battery and accessory distributor) is an independent businessman appointed by defendant Richfield, who receives and handles the orders of independent service station operators for automotive accessories within a marketing area designated by defendant Richfield.

10. The term "bulk plant" as used herein refers to a central supply depot for gasoline, oils, lubricants and other petroleum products, such plant being owned and operated by defendant Richfield and supplying petroleum products manufactured and produced by defendant to service stations.

Nature of Trade and Commerce

11. Defendant Richfield is engaged in the business of producing, refining, transporting and marketing petroleum products. It has oil reserves and producing wells in the oil fields of Texas, New Mexico, Oregon, Washington and California. Crude oil is transported by defendant from producing wells to its refineries located at Watson and Vinvale, California, at which refineries it is converted into gasoline and other petroleum products. Defendant also owns and operates two natural gasoline plants located in the State of California. The gasoline and petroleum prod- [fol. 7] ucts produced by defendant at its refineries and gasoline plants are shipped by the defendant from said plants and refineries to bulk plants located in the States of California, Oregon, Washington, Arizona, Nevada and Idaho, from which they are thereafter distributed to service stations in said States. Defendant also maintains pipelines, tank ships, water terminals, barges, tank cars, and automotive transportation systems located throughout the aforesaid States which are used by defendant in transporting its crude oil, petroleum and petroleum products from their place of acquisition or manufacture to bulk plants or service station outlets in said States.

12. Defendant Richfield owns and operates approximately 230 bulk plants from which it distributes its petroleum products to approximately 2,600 retail service stations located throughout the States of California, Oregon, Wash-

ington, Texas, Nevada and Idaho. All of said 2,600 service stations are operated by independent service station operators under written leases or painting and sales agreements with defendant. Approximately 1,200 of said service stations are leased to the operators thereof by the defendant under lease agreements under which possession of and the right to operate each service station is given to the lessee-operator, who agrees to pay monthly to the defendant as rental a fixed sum, plus an amount based on the number of gallons of gasoline received by the lessee-operator above a specified minimum. Some of these 1,200 service stations are owned by the defendant, and some of them are leased by the defendant from the owners thereof, including some of the operators. In addition to the aforesaid 1,200 service stations, approximately 1,400 service stations are operated by independant service station operators under painting and sales agreements entered into between defendant and said operators. Each of the painting agreements provides for the painting of a service station and equipment with Richfield colors and insignia, at the expense of defendant, with the agreement, however, that the opera- [fol. 8] tor of said service station will reimburse defendant for the expense of painting in the event of any breach of or the cancellation of a sales contract executed simultaneously with the painting agreement. Each sales agreement, which has been executed simultaneously with the painting agreement, contains an agreement by defendant to sell, and by the service station operator to buy from defendant, gasoline, lubricating oils and greases, in quantities between certain specified minimum and maximum amounts. The independent operators of these 1,400 service stations usually own the service stations themselves, or lease the same from the owner thereof.

13. All retail outlets at which gasoline, oils and greases are sold to the public are generally also good market outlets for the sale of automotive accessories. Lubrication and other automotive services are generally available to the public at said retail outlets. A full line of automotive accessories is also usually offered for sale and installation at said retail outlets. To an increasing extent such outlets are important markets for the sale and distribution of automotive accessories and services. Automotive acces-

sories are sold at service stations operated by independent service station operators, and such sales generally constitute a substantial volume of the business done at said service stations.

14. Defendant Richfield arranges for the distribution and sale to service stations operated by independent service station operators, of a number of petroleum products and automotive accessories not of its own manufacture or production. Such products, known as "sponsored products," are manufactured by companies located in the various states of the United States. Orders for sponsored products are generally placed with the manufacturers thereof by defendant or a "TBA distributor" with instructions to make shipment thereon from the place of manufacture to such "TBA distributor." Such shipments are generally made in interstate commerce by the manufacturer to the TBA distributor and by him sold and delivered to [fol. 9] independent service station operators. Orders received from the independent service station operator for automotive accessories not carried by said TBA distributor are placed with defendant, and such orders are thereupon transmitted by it to the manufacturing company. The manufacturer of the "sponsored products" bills defendant Richfield for all orders filled by it whether received from the defendant or received from the TBA distributor. The defendant in turn bills the TBA distributor for all sponsored products delivered to the TBA distributor by the manufacturer thereof. The TBA distributor bills the independent service station operator for all products ordered by him from or through the TBA distributor.

15. Service stations are customarily located at important highway intersections and at other readily accessible roadside locations on streets and arteries which carry extensive automotive traffic. The number of service station sites which will return reasonable profits to their operators in any given area is limited, and the 2,600 service stations whose operators have entered into the lease agreements, or painting and sales agreements, referred to in Paragraph 2 hereof, constitute a substantial portion of all the favorably situated retail outlets for petroleum products and automotive accessories available to motorists within the States

of California, Oregon, Washington, Nevada, Idaho and Arizona.

Offenses Charged

16. Beginning some time prior to 1939 and continuing thereafter up to and including the date of the filing of this Complaint, defendant Richfield has violated and is now violating Section 1 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, and Section 3 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act, in that it has executed, entered into and is operating under contracts, consisting of written and oral agreements and understand- [fol. 10] ings, *hereinafter described,* between itself and independent service station operators, which contracts are in unreasonable restraint of, and substantially lessen competition in, interstate trade and commerce in petroleum products and automotive accessories products.

17. The written agreements entered into by defendant Richfield with independent service station operators, which are in full force and effect, are known as "service station leases," "sales contracts" and "painting agreements," referred to in Paragraph 12 herein. These written agreements have been modified and supplemented by oral contracts, agreements and understandings between the defendant and the independent service station operators which specify and restrict the brands of petroleum products and automotive accessories that may be used by, sold at, or distributed through approximately 2,600 said service stations located in the States of California, Oregon, Washington, Nevada, Idaho and Arizona.

18. The defendant has entered into a lease agreement as described in Paragraph 12 hereof with each of approximately 1,200 independent service station operators in the States named in Paragraph 17 hereof. Said lease contains a termination clause which permits the lease to be cancelled on 24 hours' notice by either party with or without cause. In addition to the terms of the written lease agreements, defendant has entered into supplemental oral contracts, agreements and understandings with each of the operator-lessees under said leases, whereby said operator-lessees agree to restrict the brands of petroleum products and auto-

motive accessories which are handled by them to those brands designated or approved by the defendant, and whereby said operator-lessees agree to acquire through a TBA distributor designated by the defendant all automotive accessories sold at their service stations.

19. The defendant has entered into a written painting agreement and a written sales agreement as described in Paragraph 12 hereof with each of approximately 1,400 independent service station operators in the States named [fol. 11] in Paragraph 17 hereof. The sales agreement contains a clause which permits the cancellation of said agreement by the defendant upon five days' written notice to the independent service station operator with or without cause, and the painting agreement contains a clause which provides that upon cancellation of the sales agreement, the operator must reimburse defendant Richfield for the expense of painting his service station. In addition to the terms of these written agreements, defendant has entered into supplemental oral contracts, agreements and understandings with each of said 1,400 independent service station operators, whereby said operators agree to restrict the brands of petroleum products and automotive accessories which are handled by them to those brands designated or approved by the defendant, and whereby said operators agree to acquire from sources designated by the defendant all automotive accessories sold at their service stations.

20. The defendant has required the aforesaid independent service station operators to enter into and adhere to agreements and understandings that said service station operators would handle only defendant's petroleum products or defendant's "sponsored products" by threats both expressed and implied that it will cancel said "service station lease" or "sales contract" unles said oral agreements and understandings described in Paragraphs 18 and 19 herein are entered into, adhered to and complied with by the independent service station operator. Defendant inspects, polices and supervises the activities and sales of the independent service station operators at the 2,600 service stations involved herein to make certain that no petroleum products or automotive accessories except those designated by defendant are sold, stored or handled by the independent service station operator at the service station operated by

him. In this manner, purchases of petroleum products and automotive accessories by the independent service station [fol. 12] operator are limited to those products specifically designated by Richfield for retail handling at the 2,600 service stations involved herein by the independent service station operators thereof. In instances too numerous to be herein mentioned, defendant has actually cancelled the written lease or sales agreement of an independent service station operator who refused to conform to the oral contracts, agreements and understandings complained of herein.

Effects

21. The aforesaid contracts, agreements and understandings, written and oral, and the action and conduct of the defendant in entering into and enforcing the same, throughout the States of California, Washington, Oregon, Nevada, Arizona and Idaho, have had the effect, as intended by the defendant of

(a) preventing and eliminating competition between defendant and other producers and manufacturers of petroleum products of like utility and quality at the 2,600 service stations involved herein;

(b) preventing and eliminating competition between the manufacturers and producers of automotive accessories sponsored by defendant, and other manufacturers and producers of automotive accessories of like utility and quality, at the 2,600 service stations involved herein;

(c) depriving the independent service station operators described herein of the opportunity of purchasing and handling at the 2,600 service stations involved herein, petroleum products and automotive accessories of their own selection and in competition with those produced or sponsored by defendant;

(d) depriving the independent service station operators herein described of the opportunity of purchasing [fol. 13] petroleum products and automotive accessories at prices determined by free and open competition among the producers and manufacturers of such products and according to reasonable and competitive terms and conditions of sale and of the benefits of dis-

counts obtained by direct factory purchasing where the volume of purchases by said independent service station operators would justify such discounts;

(e) securing to defendant a monopoly in and control over the sale of all petroleum products and automotive accessories sold at the service stations involved herein;

(f) restraining and substantially lessening the competition in interstate trade and commerce in petroleum products and automotive accessories hereinbefore described.

Prayer

Wherefore, the plaintiff prays:

1. That the Court adjudge and decree that the defendant Richfield has entered into contracts, consisting of written and oral agreements and understandings, which unreasonably restrain interstate trade and commerce in petroleum products and automotive accessories, in violation of Section 1 of the Sherman Act;

2. That the Court adjudge and decree that defendant Richfield has violated Section 3 of the Clayton Act through the execution of contracts which have substantially lessened and restrained competition in petroleum products and automotive accessories;

3. That the exclusive supply arrangements and oral understandings between defendant and the independent service station operators involved herein be declared void and of no effect, and in unreasonable restraint of and as substantially lessening competition in interstate commerce in [fol. 14] petroleum products and automotive accessories, and in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act;

4. That defendant Richfield be enjoined from cancelling any lease agreements or sales contract agreements which it may have with any independent service station operator on the ground or for the reason that such operator threatens to or has purchased or dealt in petroleum products produced or manufactured by companies other than defendant, or has sold or dealt in automotive accessories other than those authorized or sponsored by defendant company;

5. That defendant Richfield and its officers, directors, agents, representatives, and all persons and corporations

acting or claiming to act on its behalf, be perpetually enjoined from entering into or enforcing any written or oral contract, agreement, or understanding, express or implied, with any independent service station operator, or from inducing or compelling, or attempting to induce or compel, by any means whatever, any independent service station operator to enter into any contract, agreement, or understanding of any kind whatsoever which provides:

(a) that the independent service station operator shall secure all of his requirements of petroleum products from defendant Richfield, or shall not handle the petroleum products of any other company;

(b) that the independent service station operator shall secure all his requirements of any one or more types of automotive accessories from or through defendant Richfield, or will not handle accessories competitive with those distributed or sponsored by defendant;

(c) that the sale of any petroleum product or automotive accessory by defendant to any independent service station operator shall be conditioned on the handling by the independent service station operator [fol. 15] of petroleum products or automotive accessories manufactured or sponsored by the defendant;

6. That plaintiff have such other and further relief as the nature of the case may require and the Court may deem proper in the premises, and that plaintiff recover the costs of this suit;

7. That pursuant to Section 5 of the Sherman Antitrust Act an order be made and entered herein requiring the defendant named herein to be brought before the Court in this proceeding as party defendant, and directing the Marshal of the Southern District of California to serve a summons upon it, and demanding that it appear herein and answer the allegations contained in this Complaint and thereafter abide by and perform such orders and decrees as the Court may make and enter.

Dated April 30, 1947.

William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to

the Attorney General; Tom C. Clark, Attorney General; Wendell Berge, Assistant Attorney General; George B. Haddock, Special Assistant to the Attorney General; James M. Carter, United States Attorney for the Southern District of California.

[fol. 16] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed November 2, 1948

Richfield Oil Corporation, Defendant, answers the complaint on file herein as follows:

(For convenience, paragraph numbers correspond to paragraph numbers of the complaint.)

1. Defendant denies that it has committed any violation, continuing or otherwise, of Section 1 of the Sherman Anti-Trust Act or of Section 3 of the Clayton Act as alleged in paragraph 1 of the complaint.

2. Defendant admits that it has an office and transacts business and is found within the Central Division of the Southern District of California. Defendant denies all of the other allegations of paragraph 2 of the complaint.

3. Defendant admits that it is a corporation organized [fol. 17] and existing under the laws of the State of Delaware with offices and its principal place of business in Los Angeles, California. Defendant admits further that it has acquired oil reserves in the State of California, that it is producing crude petroleum in the State of California, that it is refining crude petroleum into petroleum products in the State of California, that it transports and markets petroleum products in the States of California, Oregon, Washington, Nevada, Idaho and Arizona. Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph 3 of the complaint.

4. to 10. (incl.) Answering paragraphs 4 to 10 inclusive, defendant admits that the terms therein referred to

are used by plaintiff as therein defined but denies that all or any of the definitions constitute the normal or accepted meaning of said terms or are accurate.

In particular, defendant denies that the definition of "sponsored products" as alleged in paragraph 8 is accurate; and in this connection, defendant denies that the sale or distribution of petroleum products or automotive accessories at service stations are handled by or arranged for by defendant.

Defendant is without knowledge or information sufficient to form a belief as to the accuracy of the definition of "TBA distributor" as alleged in paragraph 9; particularly in view of its lack of knowledge of the precise meaning of the vague and uncertain term, "appointed"; and defendant denies that the "TBA distributor" is or has been appointed by defendant in the capacity of an agent or other representative of defendant.

11. Defendant admits that it is engaged in the business of producing, refining, transporting and marketing petroleum and petroleum products. Defendant admits further that it has oil reserves and producing wells in certain oil fields in the State of California. Defendant admits that [fol. 18] crude oil is transported by defendant from producing wells in California to its refineries located at Watson and Vinvale, California, and that at the refinery located at Watson, California, crude oil is refined into gasoline and other products.

Defendant admits that it owns and operates two natural gasoline plants located in the State of California. Defendant admits that gasoline and other petroleum products refined at the said natural gasoline plants in the State of California are shipped by defendant to defendant's refinery at Watson, California. Defendant admits further that the gasoline and petroleum products refined by defendant at its refinery at Watson, California, are in some instances shipped by defendant from said refinery to bulk plants located in the States of California, Oregon, Washington, Arizona, Nevada and Idaho; and defendant alleges that in excess of sixty-five per cent (65%) of the gasoline and petroleum products refined by defendant at its refinery at Watson, California and transported by it to

States other than California, are shipped by defendant from said refinery to marine terminals rather than to bulk plants. Defendant admits that gasoline and petroleum products stored in bulk plants in said States are sold and delivered from time to time to service stations located in the respective States in which said bulk plants are located.

Defendant admits that it maintains pipe lines within the State of California which are used by defendant in transporting crude oil and petroleum products between points solely in the State of California; but defendant denies that its pipe lines in California are used by defendant for the transportation of petroleum products to any service stations. Defendant denies further that it maintains pipe lines in any states other than the State of California for the transportation of crude oil, petroleum or petroleum products. Defendant admits that it maintains tank ships, barges, tank cars and automotive vehicles which are used [fol. 19] by defendant in transporting petroleum products from defendant's refinery at Watson, California, to marine terminals and bulk plants located in the States of California, Oregon, Washington, Arizona, Nevada and Idaho; and defendant admits that it maintains automotive vehicles which are used by defendant in making deliveries of petroleum products from certain bulk plants to service stations located in the respective States in which said bulk plants are located.

Defendant alleges that all shipments of petroleum products from their place of manufacture at defendant's refinery at Watson, California, which are or have been made to marine terminals or bulk plants located in States other than California, have been made for the purpose of meeting anticipated requirements of sale within said respective states of destination, and that any interstate commerce involved in the transportation or shipment of said petroleum products to said states other than California ceases and has ceased at the time of unloading of said petroleum products at the respective marine terminals and bulk plants, as the case may be, in said respective states other than California.

Except as hereinabove expressly admitted, defendant

denies each and every allegation contained in paragraph 11 of the complaint.

12. Defendant admits that it owns one hundred seven (107) bulk plants within the State of California, of which number twenty-three (23) are operated by defendant and eighty-four (84) are operated by commission agents; and admits that from said one hundred seven (107) bulk plants, petroleum products are distributed by defendant and said commission agents to fifteen hundred seventy-seven (1577) retail service stations located within the State of California.

Defendant admits that it owns thirty-five (35) bulk plants within the State of Oregon, of which number two (2) are [fol. 20] operated by defendant and thirty-three (33) are operated by commission agents; and admits that from said thirty-five (35) bulk plants, petroleum products are distributed by defendant and said commission agents to three hundred eighty-eight (388) retail service stations located within the State of Oregon.

Defendant admits that it owns thirty-six (36) bulk plants within the State of Washington, of which number four (4) are operated by defendant and thirty-two (32) are operated by commission agents; and admits that from said thirty-six (36) bulk plants, petroleum products are distributed by defendant and said commission agents to six hundred forty-six (646) retail service stations located within the State of Washington.

Defendant admits that it owns seven (7) bulk plants within the State of Nevada, all of which bulk plants are operated by commission agents; and admits that from said seven (7) bulk plants, petroleum products are distributed by said commission agents to thirty-nine (39) retail service stations located within the State of Nevada.

Defendant admits that it owns five (5) bulk plants within the State of Idaho, all of which bulk plants are operated by commission agents; and admits that from said five (5) bulk plants, petroleum products are distributed by said commission agents to fifty-six (56) retail service stations located within the State of Idaho.

Defendant admits that it owns twenty-two (22) bulk plants within the State of Arizona, of which number two (2) are operated by defendant and twenty (20) are operated

by commission agents; and admits that from said twenty-two (22) bulk plants, petroleum products are distributed by defendant and said commission agents to one hundred ninety (190) retail service stations located within the State of Arizona.

Defendant admits that in an insignificant number of [fol. 21] instances petroleum products have been delivered from bulk plants in one State to service stations located in other States.

Defendant alleges that from the bulk plants enumerated in this paragraph 12 it has currently sold and delivered to purchasers other than service stations in excess of twenty-seven per cent (27%) of the petroleum products delivered to said bulk plants.

Defendant admits that as of the date of the filing of this answer fourteen hundred two (1402) service stations are leased by defendant to the operators thereof under written lease agreements, and that eight hundred fifty-three (853) of said service stations are located in the State of California. Defendant admits that said lease agreements contain provisions substantially as alleged in paragraph 12 of the complaint, but denies that said lease agreements are all uniform or identical or contain the same terms or provisions. Defendant admits that with respect to said fourteen hundred two (1402) service stations, defendant owns or leases from the owner thereof, (who in some few instances is the operator of the service station) either the land or the land and service station buildings and equipment.

Defendant admits that it has entered into written sales agreements or written sales agreements and written painting agreements with service station operators and that as of the date of the filing of this answer eleven hundred seventy (1170) written sales agreements or written sales agreements and written painting agreements are in effect, and that five hundred thirty-five (535) of the service stations covered by said agreements are located in the State of California. Defendant denies that in each instance a written painting agreement and a written sales agreement have been executed simultaneously relating to a particular service station. Defendant admits that said written paint-

ing agreements provide for the painting of the service [fol. 22] station in Richfield colors and insignia at the expense of defendant and provide for the reimbursement of the expense of painting to defendant by the operator of the service station under certain terms and conditions, but defendant denies that said painting agreements provide for reimbursement to defendant upon the conditions alleged in paragraph 12 of the complaint; and defendant denies further that said painting agreements are all uniform or identical or contain the same terms or provisions. Defendant alleges that the written painting agreements were entered into by defendant for the purpose, among others, of meeting the competition of defendant's competitors who were offering like or similar painting benefits to service station operators. Defendant admits that said written sales agreements contain provisions substantially as alleged in paragraph 12 but denies that said written sales agreements are all uniform or identical or contain the same terms or provisions. Defendant admits that the operators of said eleven hundred seventy (1170) service stations usually own the service stations themselves or lease the same from the owners thereof.

Defendant alleges that various of said written leases, painting agreements and sales agreements in effect at the time of the filing of the complaint have subsequently expired, and that subsequent to the filing of the complaint, defendant has entered into additional written leases, painting agreements and sales agreements and that defendant cannot identify the particular written leases, painting agreements and sales agreements referred to in the complaint, and that the admissions herein contained do not, therefore, apply to any particular written lease, sales agreement or painting agreement.

Except as hereinabove expressly admitted, defendant denies each and every allegation contained in paragraph 12.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of [fol. 23] paragraph 13, particularly in view of its lack of knowledge of the precise meaning of the vague and uncertain terms therein contained, including "good market

outlets", "a full line of automotive accessories", "important markets", and "a substantial volume of business".

14. Defendant denies that it arranges for the distribution or sale to service stations operated by service station operators of petroleum products or automotive accessories not of its own manufacture or production, as alleged in paragraph 14; and in this connection defendant alleges:

(a) That it is necessary for a service station operator, in order to compete successfully with other service station operators, to handle and sell automotive accessories in addition to petroleum products.

(b) That defendant has investigated from time to time the quality and prices of various items of automotive accessories and on the basis of such investigation has selected from time to time particular brands of nationally advertised products which in defendant's opinion are the best or the equivalent of the best automotive accessories of the particular type available for handling and sale at service stations.

(c) That defendant has from time to time recommended to service station operators handling defendant's petroleum products the purchase and resale by them of automotive accessories so selected by defendant from time to time, which recommendations were made on the basis that such purchase and resale would be beneficial to such service station operators for various reasons including:

(1) The quality of such automotive accessories;

(2) The favorable public acceptance thereof; and

[fol. 24] (3) The favorable price and discount terms available from the manufacturers and other suppliers thereof.

(d) That defendant has authorized service station operators to sell such recommended automotive accessories on credit cards issued by defendant to members of the public.

Defendant denies that orders for automotive accessories are or were generally placed with the manufacturer thereof by defendant or a "TBA distributor" with instructions to make shipment thereon from the place of manufacture to the "TBA distributor".

Defendant denies further that the shipments therein referred to are or were generally made in interstate commerce by the manufacturer to the "TBA distributor".

Defendant denies that defendant receives any orders from any service station operator for automotive accessories.

Defendant denies that the manufacturer of the "sponsored products" bills or has billed defendant for all orders filled by such manufacturer.

Defendant denies further that defendant bills the "TBA distributor" for all "sponsored products" delivered to the "TBA distributor" by the manufacturer thereof.

Defendant here realleges its denial in paragraphs 4 to 10 of this answer that the definitions of "sponsored products" and "TBA distributor", as alleged in paragraphs 8 and 9 of the complaint, are accurate.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15, particularly in view of its lack of knowledge of the precise meaning of the vague and uncertain terms therein contained, including "important highway intersections", "reasonable profits", and "a substantial portion of all the favorably situated retail outlets for petroleum products and automotive accessories available to motorists". [fol. 25] 16. Defendant denies each and every allegation contained in paragraph 16.

17. Defendant admits that certain written agreements between defendant and certain service station operators are known as "service station leases", "sales contracts" and "painting agreements"; and in this connection, defendant realleges the allegation in paragraph 12 of this answer that defendant cannot identify the particular written leases, painting agreements and sales agreements referred to in paragraph 17.

Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph 17.

18. Defendant realleges the admission in paragraph 12 of this answer that as of the date of the filing of this answer fourteen hundred two (1402) service stations are leased by defendant to the operators thereof under written lease agreements, and that eight hundred fifty-three (853)

of said service stations are located in the State of California. Defendant realleges the allegation of paragraph 12 of this answer that defendant cannot identify the particular written leases referred to in paragraph 18. Defendant admits that the written lease agreements which are in effect as of the date of the filing of this answer contain termination clauses substantially as alleged in paragraph 18 of the complaint but denies that said lease agreements are all uniform or identical or contain the same terms or provisions.

Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph 18.

19. Defendant realleges the admission in paragraph 12 of this answer that as of the date of the filing of this answer eleven hundred seventy (1170) written sales agreements or written sales agreements and written painting agreements are in effect, and that five hundred thirty-five (535) of the service stations covered by said agreements [fol. 26] are located in the State of California. Defendant realleges the allegation of paragraph 12 of this answer that defendant cannot identify the particular written painting agreements and written sales agreements referred to in paragraph 19 of the complaint, and defendant realleges the denial in paragraph 12 of this answer that in each instance referred to in paragraph 19 of the complaint both a written painting agreement and a written sales agreement have been entered into with each of the service station operators therein referred to.

Defendant admits that certain of the written sales agreements now in effect between defendant and certain service station operators contain a clause which permits the cancellation thereof by defendant upon five days' written notice to the service station operator, but defendant denies that all written sales agreements now in effect contain such clause; and defendant denies further that said written sales agreements are all uniform or identical or contain the same terms or provisions.

Defendant admits that the painting agreements now in effect between defendant and certain service station operators contain a clause providing for the reimbursement to defendant by the service station operator for the expense

of painting the service station upon certain terms and conditions, but defendant denies that said painting agreements provide for reimbursement to defendant upon the conditions alleged in paragraph 19 of the complaint; and defendant denies further that said painting agreements are all uniform or identical or contain the same terms or provisions.

Except as herein expressly admitted, defendant denies each and every allegation contained in paragraph 19.

20. Defendant denies each and every allegation contained in paragraph 20.

21. Defendant denies each and every allegation contained in paragraph 21.

[fol. 27] Second Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Third Defense

The plaintiff has failed to join indispensable parties, in that plaintiff has failed to join as parties hereto the persons, firms and corporations with whom defendant is alleged to have made the written and oral contracts, agreements and understandings referred to in paragraphs 12, 16, 17, 18, 19 and 20 of the complaint, which written and oral contracts, agreements and understandings plaintiff prays be declared void and of no effect.

Fourth Defense

Plaintiff has failed to join persons, firms and corporations who ought to be parties to this action if complete relief is to be accorded between those already parties hereto, in that plaintiff has failed to join as parties hereto the persons, firms and corporations with whom defendant is alleged to have made the written and oral contracts, agreements and understandings referred to in paragraphs 12, 16, 17, 18, 19 and 20, which written and oral contracts, agreements and understandings plaintiff prays be declared void and of no effect. Said persons, firms and corporations are subject to the jurisdiction of the Court as to both service of process and venue and can be made parties without

depriving the Court of jurisdiction of the present parties before it.

Fifth Defense

The application and enforcement herein sought of Section 1 of the Act of Congress of July 2, 1890, as amended, 26 Stats. 209, 15 U.S.C. 1, commonly known as the Sherman Act, and of Section 3 of the Acts of Congress of October 15, 1914, as amended, 38 Stats. 731, 15 U.S.C. 14, commonly known as the Clayton Act, would enable defendant's com-
[fol. 28] petitors to contract with defendant's existing and prospective customers upon terms which would be denied defendant, with the result that defendant would be unable to compete on equal terms with its competitors and would be eliminated from competition for the business of said existing and prospective customers to defendant's irreparable injury. The application and enforcement herein sought of said Sections of the Sherman Act and Clayton Act would tend to eliminate defendant as a competitive factor in the business of marketing petroleum products, and such result would be contrary to the purpose of said Sherman Act and Clayton Act.

Sixth Defense

At the time of the commencement of this action, there was and is now pending and undisposed of in the District Court of the United States for the District of Columbia another civil action brought by this plaintiff against this defendant and others, being No. 8524 and entitled "United States of America, Plaintiff, vs. American Petroleum Institute, et al., Defendants". The charges made and the relief sought by the complaint herein are substantially the same as certain of the charges made and certain of the relief sought against defendant herein by the complaint in said action No. 8524.

Wherefore, Defendant Prays that proceedings herein be stayed pending a final determination of said action No. 8524, and the plaintiff take nothing at any time by reason of its complaint herein, and that this action be dismissed, and for such costs as may lawfully be awarded defendant,

and for such other and further relief as the Court may deem proper in the premises.

Dated: November 2, 1948.

William J. DeMartini, David Guntert, M. W. Phelan, Krystal & Paradise, Robert E. Paradise, by Robert E. Paradise, Attorneys for Defendant.

[fol. 29] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AND ORDER RE DEFENDANT'S AMENDMENT TO ANSWER—Filed June 26, 1950

It is hereby stipulated by and between the parties hereto, by and through their respective attorneys, that defendant Richfield Oil Corporation may serve and file the attached Amendment to Answer in the above entitled matter.

Dated: June 23, 1950.

William C. Dixon, Special Assistant to the Attorney General; Theron M. Hall, Special Attorney; Lawrence W. Somerville, Special Attorney. By William C. Dixon; Attorneys for Plaintiff.

[fol. 30] William J. DeMartini, David Guntert, M. W. Phelan Krystal & Paradise, Robert E. Paradise. By Robert E. Paradise; Attorneys for Dedendant.

It is so Ordered. Dated: June 26, 1950.

Peirson M. Hall, Judge of the United States District Court.

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO ANSWER OF DEFENDANT—June 20, 1950

Pursuant to stipulation of counsel and by leave of Court, defendant Richfield Oil Corporation files this amendment to its answer on file herein.

A. The following is hereby added to defendant's answer to paragraphs 4 to 10 (inclusive) by insertion therein following line 20 on page 2 of its answer:

"In particular, defendant denies that the definition of 'independent service station operator' as alleged in paragraph 7 is accurate; and in this connection defendant denies that the operator of a service station which is owned by defendant and leased to such operator or the operator of a service station which is leased by defendant from a party other than the operator thereof and thereafter subleased by defendant to such operator are 'independent' [fol. 32] service station operators under the facts and circumstances admitted and alleged in paragraph 18 of the answer as amended herein. Defendant alleges that the relationship between defendant and any such operator is not independent and that under the facts and circumstances alleged in paragraph 18 of this amendment to answer, the relationship between defendant and any such operator is analogous to the relationship of agency or to the relationship of employment for the purposes of and within the scope and meaning of the Acts of Congress commonly known as the Sherman Anti-Trust Law and Clayton Act, respectively."

B. The following is hereby added to defendant's answer to paragraph 18 by insertion therein following line 25 on page 10 of its answer:

"Defendant denies the allegation of paragraph 18 that defendant has entered into supplemental oral contracts, agreements and understandings with each of the operators-lessees under said leases, whereby said operators-lessees agree to restrict the brands of petroleum products and automotive accessories which are handled by them to those brands designated or approved by the defendant, and

whereby said operators-lessees agree to acquire through a TBA distributor designated by the defendant all automotive accessories sold at their service stations. In this connection, defendant admits that each of the service stations owned by defendant or leased by defendant from a party other than the operator thereof was acquired and/or constructed by defendant as an outlet for the sale of defendant's petroleum products to the motoring public; and defendant admits further that each operator of any such service station has been selected and trained by defendant and has been permitted by defendant to occupy said service station and use defendant's land, buildings, facilities and equipment on a temporary basis subject to termination on twenty-four hours' notice. Defendant alleges that such occupancy of any such service station by any such [fol. 33] operator was and is upon the understanding, express or implied, that defendant has the right to designate, as a condition upon such operator's continued occupancy thereof, the manner of such operator's maintenance and operation of the station including, among other matters, the appearance and cleanliness thereof, and the nature and extent of the services to be rendered to the motoring public and on the understanding, express or implied, as a condition upon such operator's continued occupancy thereof that only defendant's petroleum products be handled or sold in such service station, subject to such exceptions as defendant may permit from time to time. Defendant alleges that the relationship between defendant and any such operator is analogous to the relationship of agency or to the relationship of employment for the purposes of and within the scope and meaning of the Acts of Congress commonly known as the Sherman Anti-Trust Law and the Clayton Act, respectively. Defendant alleges further that under the facts and circumstances above admitted and alleged, the trade, custom and business of any such service station as conducted by any such operator is the trade, custom and business of defendant herein and is not the subject matter of competition."

Dated: June 20, 1950.

William J. DeMartini, David Guntert, M. W. Phelan, Krystal & Paradise, Robert E. Paradise. By S. Robert E. Paradise; Attorneys for Defendant.

[fol. 34] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

REQUEST FOR ADMISSION UNDER RULE 36—Filed October 13, 1950

Defendant, Richfield Oil Corporation, requests plaintiff, United States of America, within ten days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this Request, is genuine.

(a) Telegram dated December 2, 1941, sent to C. S. Jones, President, Richfield Oil Corporation, by the Petroleum Coordinator for War and signed by Ralph K. Davies, Deputy Petroleum Coordinator.

(b) Telegram dated September 9, 1943, sent by the Petroleum Administrator for War to E. W. Isom, [fol. 35] Sinclair Refining Co. and signed by Geo. L. Parkhurst, Chief New Facilities and Economics Section, Refining Division.

(c) Agreement dated February 3, 1942, between Defense Supplies Corporation and Richfield Oil Corporation, and executed on behalf of Defense Supplies Corporation by H. A. Mulligan, President, and by Dudley H. Diggs, Acting Secretary, and executed on behalf of Richfield Oil Corporation by H. F. Sinclair, Chairman of the Board of Directors and Cleve B. Bonner, Secretary.

(d) Agreement dated February 20, 1943, between Defense Supplies Corporation and Richfield Oil Corporation and executed on behalf of Defense Supplies Corporation by H. A. Mulligan, President and H. H. Turner, Secretary, and on behalf of Richfield Oil Corporation by Chas. S. Jones, President, and C. B. Bonner, Secretary.

2. That each of the following statements is true:

(a) That the above described telegrams were sent by the persons signing the same in their respective stated capacities on behalf of the Petroleum Coordinator for War and of the Petroleum Administrator for War, respectively, which were instrumentalities of the United States of America.

(b) That Defense Supplies Corporation, party to the agreement above described, was an instrumentality of the United States of America.

Dated: October 13, 1950.

Wm. J. DeMartini, David Guntert, M. W. Phelan, Krystal & Paradise, Robert E. Paradise, Attorneys for Defendant. By Wm. J. DeMartini.

[fol. 36] 1941 Dec. 2 PM 9:19

"C. S. Jones, President
Richfield Oil Corporation
555 South Flower Street
Los Angeles

"To further consider urgent necessity for rapid expansion of 100 Octane aviation refining capacity we are requesting all manufacturers of this product to meet with us here Wednesday, December 10. Will you please anticipate this in connection with meeting of petroleum industry council on December 8. Further, we would like that one or more technical representatives of your company be present at 100-Octane meeting prepared to furnish complete information on all phases aviation gasoline manufacture and disposition, including production, stocks, and disposition all components all grades as well as all contracts and commitments outstanding. Technical representatives should plan to remain in Washington following meeting for period of week or ten days to assist in assembly and interpretation of information. Please wire acknowledgement.

Ralph K. Davies, Deputy Petroleum Coordinator."

[fol. 37] 1943 Sep. 9 PM 2:54

WU25 59 Govt 3 Extra
ID Washington DC Sep. 9 237P

E W Isom
Sinclair Refining Co.

Understand that you desire in connection with Certificate of Necessity application for Richfield Oil Corporation 100 Octane aviation gasoline project now under construction confirmation that this project is being installed as part of expansion program requested by PAW to meet indicated shortage of 100 Octane aviation gasoline, particularly on west coast. This will confirm that fact.

Geo. L. Parkhurst, Chief New Facilities and Economics Section Refining Divn.

250P

[fol. 38] Revised February 3, 1942.

As submitted to and approved by the Board of Directors at meeting held Tuesday, February 17, 1942.

Steve B. Banner.

CONTRACT between DEFENSE SUPPLIES CORPORATION and RICHFIELD OIL CORPORATION

100-Octane Aviation Gasoline

February 3, 1942

[fol. 39] DEFENSE SUPPLIES—RICHFIELD CONTRACT

(Watson, California, Refinery)

Revised February 3, 1942.

Contract made as of February 3, 1942, between Richfield Oil Corporation, a Delaware Corporation, having its principal business office at 555 South Flower Street, Los Angeles, California, hereinafter called Seller, and Defense Supplies Corporation, a corporation created by Reconstruction Finance Corporation, pursuant to Section 5 (d) of the Reconstruction Finance Corporation Act as amended, having its principal place of business at Washington, D. C., hereinafter called Buyer.

In consideration of the mutual agreements herein contained the parties agree as follows:

I. *Expansion of Seller's Refining Facilities.*

Seller has facilities for the production at Watson, California, of approximately one thousand seven hundred (1,700) barrels per calendar day of 100-Octane aviation gasoline and is willing to expand its facilities, at an estimated cost of approximately Three Million Dollars ($3,000,000.00), to a degree which it is estimated will enable Seller to produce at Watson, California, approximately three thousand seven hundred fifty (3,750) barrels per calendar day of 100-Octane aviation gasoline. Seller shall use its best efforts to expand said facilities and shall endeavor to maintain work on said expansion day and night in so far as the requisite labor and materials are available. Seller shall use its best efforts to complete such expansion as soon as possible and not later than January 1, 1943. The force majeure provisions set forth in Section X hereof shall apply in all respects to the expansion of facilities as well as to the sale of gasoline and all other obligations of Seller.

II. *Sale and Storage of Products.*

(a) When the aforesaid expansion of Seller's facilities shall be completed and ready for operation, Seller shall promptly notify Buyer; and from and after receipt of such notification Seller shall sell and deliver and Buyer shall buy and receive, in accordance with provisions of this contract, seventy-five thousand (75,000) barrels per calendar month of 100-Octane aviation gasoline which shall be in accordance [fol. 40] with the specifications set forth in Exhibit A attached hereto and made a part hereof or any other specification which by mutual agreement shall be attached as an addendum to Exhibit A. Wherever in this contract provision is made for the sale and delivery to Buyer of a stated quantity of gasoline such quantity is an aggregate quantity of the various kinds of gasoline specified in Exhibit A collectively considered. Buyer may apportion such aggregate quantity among the various kinds of gasoline.

(b) Buyer on giving reasonable notice to Seller may require the delivery hereunder of 100-Octane aviation gasoline of specifications other than those originally set forth in

Exhibit A which are capable of being produced with the same refining facilities and the same raw materials as are used in producing 100-Octane aviation gasoline in accordance with the specifications originally set forth in Exhibit A. The prices, specifications and quantities of such products shall be determined by negotiation between the parties, and Seller shall not be required to deliver such products unless and until an agreement has been reached. Such agreement shall be reduced to writing as an addendum to Exhibit A.

(c) The term "barrel" as used in this contract means a barrel of forty-two (42) gallons and a gallon is a United States gallon of two hundred and thirty-one (231) cubic inches.

(d) Seller shall maintain storage facilities at, or in the vicinity of, Watson, California, to accommodate at least one hundred fifty thousand (150,000) barrels of 100-Octane aviation gasoline. Subject to Section VIII hereof, Buyer shall order and take deliveries in such quantities as it may determine; provided, however, that whenever Seller's above-specified storage facilities for said aviation gasoline shall be filled, Seller shall not be obligated to produce any more of said gasoline for delivery to Buyer hereunder until Buyer shall have substantially reduced by purchase and removal the amount of gasoline in storage. If such full storage condition exists, Seller shall have the right to diminish the quantities otherwise to be delivered to Buyer by an amount equal to the amount of 100-Octane aviation gasoline which was produced during such full storage condition or which would have been produced except for such full storage condition. If, however, Seller shall produce during any such period of full storage any additional 100-Octane aviation gasoline of the kind covered by this contract, then such addi- [fol. 41] tional aviation gasoline shall be treated as covered by Section III hereof. In accumulating said storage, Seller may store gasoline of the specifications last ordered by Buyer unless Buyer otherwise directs by written notice; and Buyer in ordering deliveries shall first order against the gasoline storage; provided, however, that on Buyer's request and if Seller can do so without extra cost, Seller shall change the gasoline in storage to meet other specifications covered in Exhibit A hereof.

III. *Optional Gasoline.*

Buyer shall have the option from time to time and at any time to purchase from Seller all or any part of the 100-Octane aviation gasoline which Seller may produce between the execution of this contract and the date of receipt by Buyer of notification of the completion of the expansion of said facilities to the extent that such gasoline is in excess of quantities which Seller has, prior to receipt of notification of exercise of such option, contracted to sell to parties other than Buyer. Upon the exercise of such option Seller shall, subject to Section V (c) hereof, operate the facilities at full capacity or at least to an extent sufficient to satisfy Buyer's indicated requirements.

Buyer shall also have the option from time to time and at any time to purchase all or any part of the 100-Octane aviation gasoline which Seller may produce between said receipt by Buyer of notification of completion and the expiration of this contract. Upon the exercise of such option Seller shall, subject to Section V (c) hereof, operate the facilities at full capacity or at least to an extent sufficient to satisfy Buyer's indicated requirements.

The options granted in this Section III shall terminate on any termination of this contract.

IV. *Price and Payment.*

The base price of 100-Octane aviation gasoline specified as Item 1 of Exhibit A hereof, shall be thirteen and one-half cents ($0.135) per gallon f.o.b. Seller's refinery at Watson, California. The base price of 100-Octane aviation gasoline specified as Item 2 of Exhibit A hereof shall be thirteen and one-quarter cents ($0.1325) per gallon f.o.b. Seller's refinery at Watson, California. The base prices of other kinds of 100-Octane aviation gasoline shall be as specified [fol. 42] by addenda to Exhibit A hereof. Seller represents that there has not been included in its computation of such prices any allowance for depreciation, amortization and obsolescence in excess of ten per cent (10%) per annum of that portion of the original estimated cost of the refining facilities used in the manufacture of said 100-Octane aviation gasoline which is properly allocable to such manufacture. Nothing in the preceding sentence shall preclude

Seller from using a different rate or rates for tax and accounting purposes.

Buyer shall pay promptly, but not later than the twentieth (20th) day after the end of each calendar month, all money due for gasoline delivered to it by Seller during said month. On or before the tenth (10th) day of each calendar month, Seller shall render to Buyer a statement setting forth the quantity of aviation gasoline delivered during the preceding month, the price per gallon, and the total amount to be paid therefor. Copies of the certificates of inspection referred to in Section IX hereof shall accompany the aforesaid monthly statements.

V. *Price Escalation.*

The prices of 100-Octane aviation gasoline purchased hereunder shall be subject to adjustment as follows:

(a) The said prices are based on a price of one dollar and eleven cents ($1.11) per barrel for Signal Hill crude, twenty-six degrees (26°) A.P.I., deliverable to Seller in the Los Angeles Basin Field. The price shall be increased or decreased six hundred eight ten-thousandths of one cent ($0.000608) per gallon for each one cent ($0.01 advance or decrease in the average price paid for said crude over or under one dollar and eleven cents ($1.11) per barrel by the three (3) largest purchasers of such crude in the Los Angeles Basin Field. The prices posted for such crude in the Los Angeles Basin Field by such purchasers shall constitute prima facie evidence of the prices paid by such purchasers.

(b) The said prices shall also be increased or decreased by seven hundred twenty-two ten-thousandths of one cent ($0.000722) per gallon for each one point increase or decrease in the wholesale price Index Number for "All Commodities other than Farm Products and Foods", as now published by the Bureau of Labor Statistics, United States Department of Labor, which index figure is now ninety-[fol. 43] three and five-tenths (93.5). The effective date of a change in price due to a change in the index number shall be the date of publication by the Bureau of Labor Statistics of the latest final monthly index number, regardless of what Seller's crude inventory may be at the time of such change. If said index shall cease to be issued, the parties shall use

such other index as may most closely approximate the discontinued one, and if they shall be unable to agree within ten (10) days after notice of such discontinuance as to the index to be substituted, the determination of the new index shall be made by arbitration under Section XI hereof.

(c) The prices hereinabove set forth are based upon present normal methods of transporting petroleum raw materials to Seller's refinery at Watson, California, and upon a normal operation of that refinery, in which substantial quantities of motor fuel and other products must necessarily be produced and sold in connection with the production of 100-Octane aviation gasoline. If it becomes necessary to transport petroleum raw materials to said refinery by other than present normal methods thereby incurring additional costs of transportation, or if through an abnormal reduction of available markets for motor fuel and petroleum products other than 100-Octane aviation gasoline, or if by reason of any cause or condition (whether or not of the same class or kind) resulting directly or indirectly from the existence of a state of war, the normal functioning of any refinery at which any portion of the 100-Octane aviation gasoline supplied hereunder is manufactured shall be interfered with to such an extent that in the opinion of Seller the cost of refining 100-Octane aviation gasoline is increased in respects other than those corrected by adjustment of the base price under the above paragraphs (a) and (b), Seller may give notice to Buyer that the delivery of 100-Octane aviation gasoline will be reduced in an amount sufficient in the judgment of Seller to offset the added cost of refining unless Buyer shall agree with Seller to increase the price paid for 100-Octane aviation gasoline by an amount sufficient to offset such increased cost. If within ten (10) days after the date of mailing such notice Buyer advises Seller that it does not elect to take such reduced output and Buyer and Seller are unable to agree upon the [fol. 44] amount of such increase in price within ten (10) days thereafter, Buyer may give notice to Seller that it desires to have the amount of such increase fixed by arbitration in accordance with Section XI hereof. The arbitrators to be chosen in this instance shall be persons who have had at least ten (10) years' experience in the petro-

leum business and who are not connected with either of the parties hereto. The arbitrators shall be directed to make their findings as to the amount and effective date of such price increase within fifteen (15) days after the appointment of the last-appointed arbitrator and if no decision is reached by the arbitrators within such period, the production of 100-Octane aviation gasoline by the refinery affected may be reduced as above provided.

In making adjustments under this Section V, the prices to be adjusted shall be those prices in effect immediately prior to the adjustment and such adjustment shall be made regardless of what Seller's crude inventory may be at the time of such adjustment.

VI. *Duration of Contract.*

The original term of this contract shall expire at midnight on December 31, 1945. Buyer shall have the option to extend this contract for two (2) successive yearly periods beyond the original term by giving notice in writing to Seller of the exercise of such option at least ninety (90) days prior to the end of the original term for the first yearly extension and at least ninety (90) days prior to the end of the first yearly extension for the second yearly extension. During such extension or extensions all of the provisions of this contract except those not then applicable shall be in full force and effect.

VII. *Advance on Account of Purchase of Gasoline.*

(a) Buyer shall make an advance payment to Seller on account of the purchase of 100-Octane aviation gasoline in the amount of Two Million One Hundred Thousand Dollars ($2,100,000.00) which shall be disbursed in monthly installments as the construction of the expanded facilities progresses. The first installment shall be disbursed in the amount of one-twelfth (1/12th) of said Two Million One Hundred Thousand Dollars ($2,100,000.00) immediately following the expiration of ninety (90) days from the date of this contract or immediately following receipt of notice by Buyer from Seller of Seller's waiver of its right to termi- [fol. 45] nate this contract under Section XVII hereof, which ever event shall first occur. The remaining install-

ments shall be disbursed when Seller shall deliver to Buyer statements, showing only principal items, to certify that it has expended, or firmly committed itself to expend, on account of the construction of the expanded facilities all of the funds theretofore advanced to it by Buyer and in addition has so expended, or firmly committed itself to expend, from its own funds not less than thirty-three and one-third percent (33⅓%) of the aggregate of such installments advanced by Buyer. Buyer shall have the privilege of examining Seller's books to verify said statements, but such verification shall not be a condition of payments by Buyer. If such examination shall lead to any disagreement, it shall be settled by arbitration under Section XI hereof.

(b) From the amount due Seller for deliveries of 100-Octane aviation gasoline for each of the first thirty-six (36) full calendar months following receipt by Buyer of Seller's notification of completion of the expanded facilities referred to in Section I hereof, Buyer shall deduct and retain one thirty-sixth (1/36th) of the sum of:

(1) the above advance payment, and

(2) interest at the rate of two percent (2%) per annum on outstanding balances of such advance payment accruing subsequent to the date of receipt by Buyer of Seller's notification of completion of said expanded facilities;

provided that Buyer shall also deduct and retain, with respect to each of the first twelve (12) full calendar months after the date of receipt of such notification of completion the sum of:

(1) one-twelfth (1/12th) of the amount of interest at the rate of two percent (2%) per annum on the outstanding balances of such advance payment acrued prior to and including the date of receipt by Buyer of Seller's notification of completion of said expanded facilities; and

[fol. 46] (2) one-twelfth (1/12th) of the amount of the credit, if any, referred to in paragraph (c) of this Section VII.

The above deductions shall be considered as payment for the first purchases by Buyer in each of the first thirty-six (36) full calendar months following receipt by Buyer of Seller's notification of completion of said expanded facilities.

(c) If, by reason of delay in the completion of the expanded facilities, the notification of completion referred to in Section II hereof shall not be received at least thirty-six (36) months prior to December 31, 1945, then Seller shall repay to Buyer one thirty-sixth (1/36th) of the principal amount of the advance payment for each month or fraction thereof by which receipt of said notification of completion is delayed after January 1, 1943, such repayment to be credited against any purchases by Buyer of 100-Octane aviation gasoline hereunder delivered during each of the twelve (12) full calendar months following receipt of said notification of completion; provided, however, that not more than one-twelfth (1/12th) of such credit shall be taken in each of said twelve (12) full calendar months; and provided further that any such repayment not made as provided above or in paragraph (d) of this Section VII shall be made by Seller to Buyer in cash on December 31, 1945.

(d) In the event of Seller's failure to deliver sufficient 100-Octane aviation gasoline hereunder following such notification of completion, due to reasons other than the force majeure reasons referred to in Section X hereof, to permit Buyer to recoup in any month the monthly repayment installment as provided in paragraph (b) of this Section VII, the unrecouped portion of the monthly repayment installment as aforesaid shall be repaid immediately by Seller to Buyer in cash; but if such failure was due to such force majeure reason then the repayment period provided in paragraphs (b) and (c) of this Section VII shall be extended one month for each month in which such failure due to such force majeure reason occurred.

[fol. 47] VIII. *Liquidated Damages and Limitation of Liability.*

The parties mutually agree that the Seller would be seriously damaged in the event that Buyer should breach its obligation to take that minimum quantity of 100-Octane

aviation gasoline herein agreed upon and that the liquidated damages herein provided for are not in the nature of a penalty or forfeiture and that they reflect allowance for the possible cessation of war prior to the expiration of the original term of the contract. If Buyer shall fail to purchase sufficient 100-Octane aviation gasoline in any one full calendar month following receipt by Buyer of Seller's notification of completion of said expanded facilities to liquidate the monthly repayment installment (determined as provided in paragraphs (b) and (c) of Section VII hereof), Buyer shall have the privilege to deduct and retain from amounts owing to Seller for purchases of 100-Octane aviation gasoline during the next succeeding month, over and above amounts sufficient to liquidate the regular monthly repayment installment for such month, an amount up to the unrecouped portion of the monthly repayment installment for the preceding month. If Buyer so fails to make recoupment, as aforesaid, during such succeeding month, then Seller shall, upon the expiration of such month, be entitled to retain as liquidated damages such unrecouped amount plus interest at the rate of two percent (2%) per annum on such unrecouped amount computed from the first (1st) day of the preceding month.

It is understood that the foregoing liquidated damages relate solely to a default by Buyer in not purchasing the stipulated quantities. Damages for any other default by Buyer and for any default by Seller shall be determined by Arbitration.

IX. *Deliveries and Inspections.*

(a) Seller warrants full and unencumbered title to all gasoline delivered under this contract. Title to said gasoline, and risk of loss in respect thereof, shall pass from Seller to Buyer upon delivery of the gasoline at the intake pipe of the means of transportation, f. o. b. Seller's refinery at Watson, California.

(b) Buyer shall take delivery of said gasoline in tankers, barges, tank cars, or tank trucks (tank truck deliveries to be not in excess of Seller's capacity for loading tank trucks [fol. 48] and tank car deliveries not to be in excess of two thousand (2,000) barrels in any one day all to be supplied by Buyer at its own cost and expense.

(c) Buyer shall give notice to Seller as far in advance as practicable, and in no case less than forty-eight (48) hours, of the arrival of each tanker or barge and of the quantity of and specifications of the gasoline to be loaded. Seller shall furnish without cost to Buyer berth at which each vessel may safely lie afloat together with all connections and facilities for loading, and shall load the product on board.

Deliveries shall be made in accordance with the delivery conditions at each loading point which currently are in effect with respect to deliveries made at such point to other customers.

(d) Seller shall furnish certificates of inspection, by a licensed inspector satisfactory to the parties which shall set forth the quantity and quality of each shipment of gasoline. Inspection shall be based on samples taken from Seller's storage tanks from which the product is delivered. The certificates of inspection shall be issued in quadruplicate, one set of which shall accompany the relative shipment, one of which shall forthwith be delivered to Buyer, and a third submitted to Buyer with the monthly statement required by Section IV hereof. Buyer may, at its option, waive the requirements of inspection by a licensed inspector, in which event Seller shall furnish its own certificates of inspection, which certificates shall be controlling.

(e) Inspection as to quantity of delivery into vessels shall be made by taking the temperature and measuring and gauging the product in the shore tanks from which delivery is made immediately before and immediately after loading. Inspection as to quantity of delivery into tank cars and tank trucks shall be made in accordance with the accepted practices of the trade. Adjustment in volume to a sixty degree Fahrenheit (60° F.) basis shall be made in accordance with the correction tables of the United States Bureau of Standards prevailing at the time of delivery except in case of deliveries into tank trucks, in which case no adjustment shall be made.

(f) Inspection as to quality shall be made according to the latest standard or tentative standard methods of the [fol. 49] American Society for Testing Materials, wherever applicable, and the product shall conform as to quality with the specifications set forth in Exhibit A hereof.

(g) The cost of product inspection shall be paid by Seller and billed separately to Buyer, which shall pay such cost, except when Seller's inspection is accepted in which case Seller shall assume the cost of its own inspection.

(h) The certificates of inspection of quantity and quality shall be accepted by Buyer and Seller as conclusive for invoice, payment, and all other purposes of this contract.

(i) Should any such certificate indicate a failure of the product shipped to conform completely to the specifications of quality, Buyer may nevertheless accept such product and claim an adjustment for such deficiency; provided, that in the event that such a claim is made Seller shall be notified and given an opportunity to inspect said shipment within five (5) days after arrival at destination but in any event before unloading.

(j) Upon request by Buyer, Seller shall make deliveries of 100-Octane aviation gasoline under this contract in appropriate limited quantities to points where Seller may be currently engaged in making deliveries of aviation gasoline in the ordinary course of its business. The delivery costs shall be paid by Buyer and are to be mutually agreed upon.

(k) Seller shall not be obligated to procure the 100-Octane gasoline to be delivered hereunder from any source other than its Watson, California, refinery.

X. *Force Majeure.*

Seller shall not be liable for delays or defaults in its performance under this contract due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts or requests of the Government, or of any Governmental officer or agent purporting to act under authority, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes and failures, exhaustion or unavailability, or delays in delivery, of any product, service or material necessary in the expansion of the facilities contemplated by Section I hereof or in the manufacture and delivery of aviation gasoline deliverable hereunder, including crude oil, supplies, raw materials, ingredients and lead tetraethyl.

[fol. 50] XI. *Arbitration.*

In case of any disagreement between Buyer and Seller as to any right, obligation, term, or provisions of this contract, including any disagreement as to the price to be paid for gasoline to be delivered hereunder, the parties shall make an earnest effort to settle such disagreement to their mutual satisfaction. If such effort be unsuccessful, then either party may cause such disagreement to be submitted for determination by arbitrators by giving to the other party a notice in writing or by telegraph to that effect and giving the name of the arbitrator chosen by the party giving the notice. Within five (5) days after receipt of such notice of arbitration, the other party shall, in writing or by telegraph, name the arbitrator chosen by such party, and within five (5) days after the appointment of the second arbitrator, an additional arbitrator shall be selected by the two (2) arbitrators theretofore appointed, provided, however, if one of the parties shall have failed to appoint an arbitrator as hereinbefore provided, the sole arbitrator shall arbitrate the disagreement alone. If two (2) arbitrators shall have been appointed as aforesaid and shall have failed to select an additional arbitrator within the above stated time, the additional arbitrator shall be appointed by the person who at the time is the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit, acting in his individual and not judicial capacity, upon application therefore by either of the parties. The decision of a majority of the arbitrators so appointed, or if either party shall have failed to appoint its arbitrator as aforesaid, the decision of the sole arbitrator shall be final and binding on the parties for all purposes. Each party shall pay the cost and expenses of the arbitrator appointed by such party, and the other costs and expenses of the arbitration, including the cost and expenses of the additional arbitrator, shall be paid by the party to the arbitration whose claim is not sustained or if partially sustained the costs shall be apportioned. Pending such determination of every disagreement as to the price to be paid for gasoline delivered hereunder, Buyer shall, upon contesting any price claimed by Seller to be due, pay the price which Buyer alleges to be due and shall immediately upon such determi-

nation pay any balance found by mutual agreement or by said arbitrators to be due.

[fol. 51] XII. *Taxes.*

Buyer shall pay in addition to the prices as established in Sections IV and V hereof, any new or additional taxes, fees, or charges, other than income, excess profits, or corporate franchise taxes, which Seller may be required by any municipal, state, or federal law in the United States or any foreign country to collect or pay by reason of the production, manufacture, sale or delivery of the commodities delivered hereunder. Buyer shall also pay any such taxes on crude petroleum, or the transportation thereof, to the extent such taxes result in increased cost of the commodities delivered hereunder not compensated for by Section V hereof.

Buyer shall also pay in addition to the prices as established in Sections IV and V hereof, any now existing taxes, fees, or charges measured by the volume or sales price of the aviation gasoline delivered hereunder, imposed upon Seller by reason of the production, manufacture, storage, sale or delivery of such gasoline, unless Buyer or Seller is entitled to exemption from a given tax, fee or charge by virtue of Buyer's governmental status; it being understood that Buyer now believes that both Buyer and Seller are entitled to such exemption. Seller represents that the taxes, fees and charges referred to in this paragraph have not been included in its computation of costs on which the prices set forth in Section IV hereof are based.

If in any case the parties cannot agree on the question as to whether or not Buyer or Seller is entitled to exemption from a given tax, fee or charge by virtue of Buyer's governmental status, the burden shall be upon Buyer to obtain a ruling in writing from a duly constituted and authorized governmental tax authority as to such exemption. Until such ruling is obtained Buyer shall pay the amount of the tax to Seller or to the appropriate tax collecting agency or make satisfactory arrangements with such tax collecting agency.

Any addition of taxes to the prices as established in Sections IV and V hereof shall not be considered in arriving

at the value of the gasoline delivered hereunder in connection with those portions of the contract referring to liquidated damages, repayment of advance or recoupment of advance, and such taxes shall be shown separately and be in addition to the price.

[fol. 52] XIII. *Notices.*

Any notice to be given hereunder shall be in writing and may be personally delivered or sent by cable, telegram or registered mail to the party for whom intended at the address of such party as specified above. A notice personally delivered to either party must be personally delivered to an officer or manager thereof. Notice by registered mail shall be deemed to have been given at the expiration of that time after mailing which is normally required by the postal authorities to make delivery. Cabled or telegraphed notice shall be deemed given the day after sending the cable or telegram. Each party shall immediately send to the other by regular mail confirming copies of any notices sent by cable, telegraph or air mail. Either party may by notice as aforesaid change its address for notices thereafter.

XIV. *Entirety of Contract.*

This instrument contains the entire agreement between the parties in respect of the subject matter and there are no conditions, warranties, representations or stipulations relating thereto which are not merged herein. The right of either party to require strict performance shall not be affected by any previous waiver or course of dealing, unless such waiver be in writing signed by an officer or other duly authorized person and specify a duration sufficient in time to embrace the matter in question. No modification shall be binding unless in writing and signed by officers of the parties. Authorization or ratification by the boards of directors of the parties shall not be required in respect of modifications.

XV. *Assignability.*

This contract shall be binding upon, and shall inure to the benefit of, the successors and assigns of the respective parties hereto; provided, however, neither party shall have the

right to assign this contract without the written consent of the other party, except that Buyer may assign to any other governmental Agency, department, instrumentality or wholly government-owned corporation in which event Buyer shall remain liable.

XVI. *Statutory Compliance.*

In carrying out this contract Seller agrees to comply with, and give all stipulations and representations required by applicable Federal laws and further agrees to require [fol. 53] such compliances, representations, others incidental to or in connection with this contract as may be required by applicable Federal laws; and notwithstanding the generality of the foregoing, Seller further agrees that in the performance of this contract it will not discriminate against any worker because of race, creed, color or national origin.

Seller is a corporation and this contract is made with it for its general benefit and no Member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom in violation of the law of the United States covering such matters.

XVII. *Right to Terminate.*

Seller shall have the right to terminate this contract within (90) days of the date thereof, unless within said ninety (90) days it shall receive all governmental assistance which is available or necessary for the prompt completion of the expanded facilities which Seller will erect and install hereunder, including, without limitation, priorities and allocations necessary for obtaining materials, equipment, supplies and crude petroleum, and assurances from the Treasury Department, in the form of closing agreements, that the advance payment provided for in Section VIII hereof, or any part thereof, will not be treated as taxable income upon receipt by Seller, but that the ratable portions thereof will be treated as amounts received for products supplied, when and as such ratable portions are credited for that purpose hereunder. Failure so to terminate shall not constitute a waiver of any other rights of Seller.

In witness whereof, the parties hereto have executed this contract as of the date and year first above written.

Defense Supplies Corporation, by H. A. ——, President.

Attest: Dudley H. Diggs, Acting Secretary.

Richfield Oil Corporation, by H. —. ——, Chairman of the Board of Directors.

Attest: Steve B. Banner, Secretary.

[fol. 54] EXHIBIT "A"

Item 1 ..... price, 13.5 cents per gallon, F. O. B. Seller's refinery at Watson, California.

U. S. Army—Navy Supply
AN-VV-F-781, Sept. 26, 1940
Amendment No. 3, June 6, 1941
Knock Test Method, AN-VV-F-746

100-Octane Number by Method AN-VV-F-746

Lead Limit 3.0 cc/Gal.

Item 2 ..... price, 13.25 cents per gallon, F. O. B. Seller's refinery at Watson, California.

U. S. Army—Navy Supply

Same as above with Amendment No. 4, Nov. 24, 1941.

Lead Limit 4.0 cc/Gal.

[fol. 55] Guarantee by Reconstruction Finance Corporation

In consideration of the execution of the within contract and as an inducement to Richfield Oil Corporation to enter into said contract, Reconstruction Finance Corporation does hereby guarantee the full and complete performance of all of the terms and conditions of said contract on the part of Defense Supplies Corporation (a subsidiary of Re-

construction Finance Corporation) to be performed at the time and in the manner therein provided.

In witness whereof, Reconstruction Finance Corporation has caused this Guarantee to be executed by its officers thereunto duly authorized this 3rd day of February, 1942.

Reconstruction Finance Corporation. By Charles B. Henderson, Chairman.

Attest: —— ——, Acting Secretary. (Seal.)

[fol. 56] Defense Supplies—Richfield Contract

(Watson Refinery—Second Contract)

As submitted to and approved by the Board of Directors at meeting held Wednesday, May 12, 1943.

Chas. B. Bauch.

Revised March 23, 1943.

Contract made as of February 20, 1943, between Richfield Oil Corporation, a Delaware Corporation, having its principal business office at 555 South Flower Street, Los Angeles, California, hereinafter called Seller, and Defense Supplies Corporation, a corporation created by Reconstruction Finance Corporation, pursuant to Section 5 (d) of the Reconstruction Finance Corporation Act as amended, having its principal place of business at Washington, D. C., hereinafter called Buyer.

In consideration of the mutual agreements herein contained the parties agree as follows:

A certain contract made as of February 3, 1942, between the parties entitled "Contract between Defense Supplies Corporation and Richfield Oil Corporation" is hereby modified to the extent that it is inconsistent herewith and shall otherwise remain in full force and effect. Said certain contract will be referred to hereinafter as "the prior contract".

I. *Expansion of Seller's Refining Facilities.*

As of the date of the prior contract, Seller had existing facilities for the production at Watson, California, of ap-

proximately one thousand seven hundred (1,700) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 1 of Exhibit A hereof.

Seller has now recently completed an expansion of such facilities contemplated by the prior contract, to an extent which Seller originally estimated would enable it to produce approximately three thousand seven hundred fifty (3,750) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 1 of Exhibit A hereof and which Seller currently estimates will enable it to produce approximately three thousand sixty-five (3,065) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 3 of Exhibit A hereof.

[fol. 57] Seller is willing to make an additional expansion of its facilities at an estimated cost of approximately Fourteen Million Three Hundred Seventy-five Thousand Dollars ($14,375,000.00), which it is estimated will enable Seller to produce at Watson, California, a total of approximately ten thousand two hundred (10,200) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 3 of Exhibit A hereof. Seller shall use its best efforts to expand said additional facilities and shall endeavor to maintain work on said expansion day and night in so far as the requisite labor and materials are available. Seller shall use its best efforts to complete such expansion as soon as possible and not later than March 1, 1944. The force majeure provisions set forth in Section X hereof shall apply in all respects to the expansion of facilities as well as to the sale of gasoline and all other obligations of Seller.

II. *Sale and Storage of Products.*

(a) When the aforesaid additional expansion of Seller's facilities shall be completed and ready for operation, Seller shall promptly notify Buyer; and from and after receipt of such notification Seller shall sell and deliver and Buyer shall buy and receive, in accordance with provisions of this contract, two hundred twenty-five thousand (225,000) barrels per calendar month of 100 octane aviation gasoline which shall be in accordance with the specifications set forth in Exhibit A hereof or any other specification which

by mutual agreement shall be attached as an addendum to Exhibit A.

(b) Wherever in this contract provision is made for the sale and delivery to Buyer of a stated quantity of gasoline such quantity shall be an aggregate quantity of the various kinds of gasoline specified in Exhibit A collectively considered. Buyer may apportion such aggregate quantity among the various kinds of gasoline.

(c) Buyer on giving reasonable notice to Seller may require the delivery hereunder of 100 octane aviation gasoline of specifications other than those originally set forth in Exhibit A hereof which are capable of being produced with the same refining facilities and the same raw materials as are used in producing 100 octane aviation gasoline in accordance with the specifications originally set forth in Exhibit A hereof. The prices, specifications and quantities [fol. 58] of such products shall be determined by negotiation between the parties, and Seller shall not be required to deliver such products unless and until an agreement has been reached. Such agreement shall be reduced to writing as an addendum to Exhibit A hereof.

(d) The term "barrel" as used in this contract means a barrel of forty-two (42) gallons. The term "gallon" means a United States gallon of two hundred and thirty-one (231) cubic inches.

(e) Seller shall maintain storage facilities at, or in the vicinity of, Watson, California, to accommodate at least three hundred thousand (300,000) barrels of 100 octane aviation gasoline. Subject to Section VIII hereof, Buyer shall order and take deliveries in such quantities as it may determine; provided, however, that whenever Seller's above-specified storage facilities for said aviation gasoline shall be filled, Seller shall not be obligated to produce any more of said gasoline for delivery to Buyer hereunder until Buyer shall have substantially reduced by purchase and removal the amount of gasoline in storage. If such full storage condition exists, Seller shall have the right to diminish the quantities otherwise to be delivered to Buyer by an amount equal to the amount of 100 octane aviation gasoline which was produced during such full storage condition. If, however, Seller shall produce during any such

period of full storage any additional 100 octane aviation gasoline of the kind covered by this contract, then such additional aviation gasoline shall be treated as covered by Section III hereof. In accumulating said storage, Seller may store gasoline of the specifications last ordered by Buyer unless Buyer otherwise directs by written notice; and Buyer in ordering deliveries shall first order against the gasoline in storage; provided, however, that on Buyer's request and if Seller can do so without extra cost, Seller shall change the gasoline in storage to meet other specifications covered in Exhibit A hereof.

[fol. 59] III. *Optional Gasoline.*

(a) Buyer shall also have the option from time to time and at any time to purchase all or any part of the 100 Octane aviation gasoline which Seller may produce between the effective date of the notification referred to in Section II (a) hereof and the expiration of this contract. Upon the exercise of such option Seller shall, subject to Section V (c) hereof, operate the facilities at full capacity or at least to an extent sufficient to satisfy Buyer's indicated requirements.

IV. *Price and Payment.*

(a) Prior to the effective date of the notification referred to in Section II (a) hereof, the base price of 100 octane aviation gasoline, specified as Item 2 of Exhibit A hereof, shall be thirteen and one-quarter cents ($0.1325) per gallon f.o.b. Seller's refinery at Watson, California, but said base price shall not apply from and after the effective date of the notification referred to in Section II (a) hereof.

(b) From and after the effective date of the notification referred to in Section II (a) hereof, the base price of 100 octane aviation gasoline in accordance with Item 3 of Exhibit A hereof purchased under the present contract and under the prior contract shall be thirteen and one-half cents ($0.135) per gallon f.o.b. Seller's refinery at Watson, California.

(c) Seller represents that there has not been included in its computation of such prices any allowance for depre-

ciation, amortization and obsolescence in excess of ten per cent (10%) per annum of that portion of the original cost of its existing refining facilities used in the manufacture of said 100 octane aviation gasoline which is properly allocable to such manufacture, plus ten per cent (10%) per annum of that portion of the original estimated cost of its proposed additional refining facilities to be used in the manufacture of said 100 octane aviation gasoline which is properly allocable to such manufacture. Nothing in the preceding sentence shall preclude Seller from using a different rate or rates for tax and accounting purposes.

[fol. 60] (d) Buyer shall pay promptly, but not later than the twentieth (20th) day after the end of each calendar month, all money due for gasoline delivered to it by Seller during said month. On or before the tenth (10th) day of each calendar month, Seller shall render to Buyer a statement setting forth the quantity of aviation gasoline delivered during the preceding month, the price per gallon, and the total amount to be paid therefor. Copies of the certificates of inspection referred to in Section IX hereof shall accompany the aforesaid monthly statements.

V. *Price Escalation*

The base prices of 100 octane aviation gasoline purchased under the present contract and under the prior contract shall be subject to adjustment, first, as provided in Exhibit B hereof, and second, as follows:

(a) The said base prices are based on a price of One Dollar and Eleven Cents ($1.11) per barrel for twenty-six degree (26°) A.P.I. Signal Hill crude deliverable to Seller in the Signal Hill Field. The said prices shall be increased or decreased by a percentage equal to one-half the percentage increase or decrease in the average price paid for such crude over or under One Dollar and Eleven Cents ($1.11) per barrel by the three (3) largest purchasers of such crude in the Signal Hill Field. The prices posted for such crude in the Signal Hill Field should constitute prima facie evidence of the prices said by such purchasers.

(b) The base price for 100 octane aviation gasoline set forth in Section IV (a) hereof shall also be increased or decreased by a percentage equal to one-half the percentage

increase or decrease in the final monthly wholesale price Index Number for "All Commodities other than Farm Products and Foods," as now published by the Bureau of Labor Statistics. United States Department of Labor, over or under the index figure of ninety-three and five-tenths (93.5) (the final index number used in the prior contract). The effective date of a change in price due to a change in the index number shall be the date of publication by the Bureau of Labor Statistics of the latest final monthly index number. If said index shall cease to be issued, the [fol. 61] parties shall use such other index as may most closely approximate the discontinued one, and if they shall be unable to agree within ten (10) days after notice of such discontinuance as to the index to be substituted, the determination of the new index shall be made by arbitration under Section XI hereof.

(c) The base price for 100 octane aviation gasoline set forth in Section IV (b) hereof shall also be increased or decreased by a percentage equal to one-half the percentage increase or decrease over or under a calculated index figure which is the weighted average of three thousand sixty-five (3,065) barrels per calendar day at ninety-three and five-tenths (93.5) and seven thousand one hundred thirty-five barrels per calendar day at ninety-five and eight-tenths (95.8) (the present final index number). The effective date of a change in price due to a change in the index number shall be the date of publication by the Bureau of Labor Statistics of the latest final monthly index number.

(d) The prices hereinabove set forth are based upon present normal methods of transporting petroleum raw materials to Seller's refinery at Watson, California, and upon a normal operation of that refinery, in which substantial quantities of motor fuel and other products must necessarily be produced and sold in connection with the production of 100 octane aviation gasoline. If it becomes necessary to transport petroleum raw materials to said refinery by other than present normal methods thereby incurring additional costs of transportation, or if through an abnormal reduction of available markets for motor fuel and petroleum products other than 100 octane aviation gasoline, or if by reason of any cause or condition (whether or not

of the same class or kind) resulting directly or indirectly from the existence of a state of war, the normal functioning of any refinery at which any portion of the 100 octane aviation gasoline supplied hereunder is manufactured shall be interfered with to such an extent that in the opinion of Seller the cost of refining 100 octane aviation gasoline is increased in respects other than those corrected by adjustment of the base price under the above paragraphs (a) (b), and (c), Seller may give notice to Buyer that the delivery of [fol. 62] 100 octane aviation gasoline will be reduced in an amount sufficient in the judgment of Seller to offset the added cost of refining unless Buyer shall agree with Seller to increase the price paid for 100 octane aviation gasoline by an amount sufficient to offset such increased cost. If within ten (10) days after the date of mailing such notice Buyer advises Seller that it does not elect to take such reduced output and Buyer and Seller are unable to agree upon the amount of such increase in price within ten (10) days thereafter, Buyer may give notice to Seller that it desires to have the amount of such increase fixed by arbitration in accordance with Section XI hereof. The arbitrators to be chosen in this instance shall be persons who have had at least ten (10) years' experience in the petroleum business and who are not connected with either of the parties hereto. The arbitrators shall be directed to make their findings as to the amount and effective date of such price increase within fifteen (15) days after the appointment of the last-appointed arbitrator and if no decision is reached by the arbitrators within such period, the production of 100 octane aviation gasoline by the refinery affected may be reduced as above provided.

(e) In making adjustments under this Section V, the prices to be adjusted shall be those prices in effect immediately prior to the adjustment and such adjustment shall be made regardless of what Seller's crude inventory may be at the time of such adjustment.

VI. *Duration of Contract*

The original term of this contract shall expire at midnight on the last day of the last of thirty-six (36) consecutive calendar months after the effective date of the notifica-

tion referred to in Section II (a) hereof, but not later, in any event, than June 30, 1947. Buyer shall have the option to extend this contract for two (2) successive yearly periods beyond the original term by giving notice in writing to Seller of the exercise of such option at least ninety (90) days prior to the end of the original term for the first yearly extension and at least ninety (90) days prior to the end of [fol. 63] the first yearly extension for the second yearly extension. Upon such extension the obligations to purchase and receive and the prices to be paid shall be fixed by agreement between the parties hereto during the ninety (90) day period prior to each such extension. All of the other provisions of this contract except those not then applicable shall be in full force and effect. Section VI of the prior contract is hereby superseded and cancelled, except for the first sentence thereof.

VII. *Advance on Account of Purchase of Gasoline*

(a) In addition to the advance payment provided for in the prior contract, Buyer shall make an advance payment to Seller on account of the purchase of 100 octane aviation gasoline under this contract in the amount of Ten Million Seven Hundred Eighty-one Thousand Two Hundred Forty-four Dollars ($10,781,244.00) which shall be disbursed in monthly installments as the construction of the expanded facilities progresses. The first installment shall be disbursed in the amount of one-twelfth (1/12th) of said Ten Million Seven Hundred Eighty-one Thousand Two Hundred Forty-four Dollars ($10,781,244.00) immediately following the expiration of ninety (90) days from the date of this contract or immediately following receipt of notice by Buyer from Seller of Seller's waiver of its right to terminate this contract under Section XVII hereof, whichever event shall first occur. The remaining installments shall be disbursed when Seller shall deliver to Buyer statements, showing only principal items, to certify that it has expended, or firmly committed itself to expend, on account of the construction of the additional expansion of facilities referred to in Section I hereof all of the funds theretofore advanced to it by Buyer and in addition has so expended, or firmly committed itself to expend, from its own funds not less than thirty-three and one-third percent (33⅓%) of the aggre-

gate of such installments advanced by Buyer. Buyer shall have the privilege of examining Seller's books to verify said statements, but such verification shall not be a condition of payments by Buyer. If such examination shall lead to any disagreement, it shall be settled by arbitration under Section XI hereof.

[fol. 64] (b) From the amount due Seller for deliveries of 100 octane aviation gasoline for each of the first thirty-six (36) full calendar months following receipt by Buyer of Seller's notification of completion of the additional expansion of facilities referred to in Section I hereof, Buyer shall deduct and retain the sum of:

(1) one thirty-sixth (1/36th) of the above advance payment, and

(2) interest at the rate of two percent (2%) per annum on outstanding balances of such advance payment accruing subsequent to the date of receipt by Buyer of Seller's notification of completion of said additional expansion of facilities;

provided that Buyer shall also deduct and retain, with respect to each of the first twelve (12) full calendar months after the date of receipt of such notification of completion the sum of:

(1) one-twelfth (1/12th) of the amount of interest at the rate of two percent (2%) per annum on the outstanding balances of such advance payment accrued prior to and including the date of receipt by Buyer of Seller's notification of completion of said additional expansion of facilities; and

(2) one-twelfth (1/12th) of the amount of the credit, if any, referred to in paragraph (c) of this Section VII.

The above deductions, plus the deductions under the provisions of Section VII of the prior contract accruing subsequent to the effective date referred to in Section II (a) hereof, shall be considered as payment for the first purchases by Buyer in each of the first thirty-six (36) full calendar months following the effective date of the notification referred to in Section II (a) hereof.

(c) If, by reason of delay in the completion of the expanded facilities, the effective date of the notification referred to in Section II (a) hereof shall not be at least thirty-six (36) months prior to June 30, 1947, then Seller shall [fol. 65] repay to Buyer one thirty-sixth (1/36th) of the principal amount of the advance payment for each month or fraction thereof by which the effective date of said notification is subsequent to July 1, 1944, such repayment to be credited against any purchases by Buyer of 100 Octane aviation gasoline hereunder delivered during each of the twelve (12) full calendar months following the effective date of said notification; provided, however, that not more than one-twelfth (1/12th) of such credit shall be taken in each of said twelve (12) full calendar months; and provided further that any such repayment not made as provided above or in paragraph (d) of this Section VII shall be made by Seller to Buyer in cash on expiration of the original term of this contract.

(d) In the event of Seller's failure to deliver sufficient 100 octane aviation gasoline hereunder following the effective date of the notification referred to in Section II (a) hereof, due to reasons other than the force majeure reasons referred to in Section X hereof, to permit Buyer to recoup in any month the monthly repayment installment as provided in paragraph (b) of this Section VII, the unrecouped portion of the monthly repayment installment as aforesaid shall be repaid immediately by Seller to Buyer in cash; but if such failure was due to such force majeure reason then the repayment period provided in paragraphs (b) and (c) of this Section VII shall be extended one month for each month in which such failure due to such force majeure reason occurred.

VIII. *Liquidated Damages and Limitation of Liability.*

(a) The parties mutually agree that the Seller would be seriously damaged in the event that Buyer should breach its obligation to take that minimum quantity of 100 octane aviation gasoline herein agreed upon and that the liquidated damages herein provided for are not in the nature of a penalty or forfeiture and that they reflect allowance for the possible cessation of war prior to the expiration of the

original term of the contract. If Buyer shall fail to purchase sufficient 100 octane aviation gasoline in any one full calendar month following the effective date of the notification referred to in Section II (a) hereof to liquidate the total of [fol. 66] the monthly repayment installments under this contract and the prior contract (determined as provided in paragraphs (b) and (c) of Section VII hereof and in paragraphs (b) and (c) of Section VII of the prior contract), Buyer shall have the privilege to deduct and retain from amounts owing to Seller for purchases of 100 octane aviation gasoline during the next succeeding month, over and above amounts sufficient to liquidate the regular monthly repayment installments for such month, an amount up to the unrecouped portion of the monthly repayment installments for the preceding month. If Buyer so fails to make recoupment, as aforesaid, during such succeeding month, then Seller shall, upon the expiration of such month, be entitled to retain as liquidated damages such unrecouped amount plus interest at the rate of two percent (2%) per annum on such unrecouped amount computed from the first (1st) day of the preceding month.

(b) The foregoing liquidated damages and the liquidated damages provided in Section VIII of the prior contract relate solely to a default by Buyer in not purchasing the stipulated quantities and there shall be no other damages for any failure by Buyer to take the quantities stipulated in Section II (a) of the prior contract and Section II (a) of the present contract. Damages for any other default by Buyer and for any default by Seller shall be determined by arbitration under Section XI hereof.

IX. *Deliveries and Inspections.*

(a) Seller warrants full and unencumbered title to all gasoline delivered under this contract. Title to said gasoline, and risk of loss in respect thereof, shall pass from Seller to Buyer upon delivery of the gasoline at the intake pipe of the means of transportation, f.o.b. Seller's refinery at Watson, California.

(b) Buyer shall take delivery of said gasoline in tankers, barges, tank cars, or tank trucks (tank truck deliveries to be not in excess of Seller's capacity for loading tank trucks

and tank car deliveries not to be in excess of two thousand (2,000) barrels in any one day) all to be supplied by Buyer at its own cost and expense.

[fol. 67] (c) Buyer shall give notice to Seller as far in advance as practicable, and in no case less than forty-eight (48) hours, of the arrival of each tanker or barge and of the quantity of and specifications of the gasoline to be loaded. Seller shall furnish without cost to Buyer berth at which each vessel may safely lie afloat together with all connections and facilities for loading, and shall load the product on board. Deliveries shall be made in accordance with the delivery conditions at each loading point which currently are in effect with respect to deliveries made at such point to other customers.

(d) Seller shall furnish certificates of inspection, by a licensed inspector satisfactory to the parties which shall set forth the quantity and quality of each shipment of gasoline. Inspection shall be based on samples taken from Seller's storage tanks from which the product is delivered. The certificates of inspection shall be issued in five counterparts, one set of which shall accompany the relative shipment, one of which shall be forwarded forthwith to Buyer, a third submitted to Buyer with the monthly statement required by Section IV hereof, a fourth set of which shall be delivered forthwith to Seller, and a fifth set of which shall be delivered forthwith to the authorized officer or employee of the War Department or Navy Department referred to in paragraph (1) of this Section IX. Buyer may, at its option, waive the requirements of inspection by a licensed inspector, and in such event, and in case of shipments made from points (other than refineries) where no licensed inspector is available, Seller shall furnish its own certificates of inspection, which certificates shall be controlling.

(e) Inspection as to quantity of delivery into vessels shall be made by taking the temperature and measuring and gauging the product in the shore tanks from which delivery is made immediately before and immediately after loading. Inspection as to quantity of delivery into tank cars and tank trucks shall be made in accordance with the accepted practices of the trade. Adjustment in volume to a sixty degree Fahrenheit (60°F.) basis shall be made in accordance with

[fol. 68] the correction tables of the United States Bureau of Standards prevailing at the time of delivery except in case of deliveries of quantities less than four thousand (4,000) gallons into tank wagons, in which case no adjustment shall be made.

(f) Inspection as to quality shall be made according to the latest standard or tentative standard methods of the American Society for Testing Materials, wherever applicable, and the product shall conform as to quality with the specifications sef forth in Exhibit A hereof.

(g) The cost of product inspection shall be paid by Seller and billed separately to Buyer, which shall pay such cost, except when Seller's inspection is accepted in which case Seller shall assume the cost of its own inspection.

(h) The certificates of inspection of quantity and quality shall be accepted by Buyer and Seller as conclusive for invoice, payment, and all other purposes of this contract.

(i) Should any such certificate indicate a failure of the product shipped to conform completely to the specifications of quality, Buyer may neverth-less accept such product and claim an adjustment for such deficiency; provided, that in the event that such a claim is made Seller shall be notified and given an opportunity to inspect said shipment within five (5) days after arrival at destination but in any event before unloading.

(j) Upon request by Buyer, Seller shall make deliveries of 100 octane aviation gasoline under this contract in appropriate limited quantities to points where Seller may be currently engaged in making deliveries of aviation gasoline in the ordinary course of its business. The delivery costs shall be paid by Buyer and are to be mutually agreed upon.

(k) Seller shall not be obligated to procure the 100 octane gasoline to be delivered hereunder from any source other than its Watson, California, refinery.

(1) Until further notice from Buyer to Seller, for the purposes of this Section IX any officer or employee of the War Department or Navy Department who is properly authorized to accept deliveries of gasoline for his Department is hereby nominated as agent for Buyer and authorized [fol. 69] to take delivery of aviation gasoline hereunder, to waive the aforesaid requirements of inspection by a licensed

inspector, and to receipt on behalf of Buyer, in a manner approved by Buyer, for deliveries of such aviation gasoline from Seller to Buyer.

X. *Force Majeure.*

Seller shall not be liable for delays or defaults in its performance under this contract due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts or requests of the Government, or of any Governmental officer or agent purporting to act under authority, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes and failures, exhaustion or unavailability, or delays in delivery, of any product, service or material necessary in the expansion of the facilities contemplated by Section I hereof or in the manufacture and delivery of aviation gasoline deliverable hereunder, including crude oil, supplies, raw materials, ingredients and lead tetraethyl.

XI. *Arbitration.*

In case of any disagreement between Buyer and Seller as to any right, obligation, term, or provisions of this contract, including any disagreement as to the price to be paid for gasoline to be delivered hereunder, the parties shall make an earnest effort to settle such disagreement to their mutual satisfaction. If such effort be unsuccessful, then either party may cause such disagreement to be submitted for determination by arbitrators by giving to the other party a notice in writing or by telegraph to that effect and giving the name of the arbitrator chosen by the party giving the notice. Within five (5) days after receipt of such notice of arbitration, the other party shall, in writing or by telegraph, name the arbitrator chosen by such party, and within five (5) days after the appointment of the second arbitrator, an additional arbitrator shall be selected by the two (2) arbitrators theretofore appointed, provided, however, if one of the parties shall have failed to appoint an arbitrator as hereinbefore provided, the sole arbitrator shall arbitrate the disagreement alone. If two (2) arbitrators shall have been appointed as aforesaid and shall have failed to select an additional arbitrator within the above stated time, the

additional arbitrator shall be appointed by the person who at the time is the Senior Judge of the United States Circuit [fol. 70] Court of Appeals for the Ninth Circuit, acting in his individual and not judicial capacity, upon application therefore by either of the parties. The decision of a majority of the arbitrators so appointed, or if either party shall have failed to appoint -is arbitrator as aforesaid, the decision of the sole arbitrator shall be final and binding on the parties for all purposes. Each party shall pay the cost and expenses of the arbitrator appointed by such party, and the other costs and expenses of the arbitration, including the cost and expenses of the additional arbitrator, shall be paid by the party to the arbitration whose claim is not sustained or if partially sustained the costs shall be apportioned. Pending such determination of every disagreement as to the price to be paid for gasoline delivered hereunder, Buyer shall, upon contesting any price claimed by Seller to be due, pay the price which Buyer alleges to be due and shall immediately upon such determination pay any balance found by mutual agreement or by said arbitrators to be due.

XII. *Taxes.*

(a) Buyer shall pay in addition to the prices as established in Sections IV and V hereof, any new or additional taxes, fees, or charges, other than income, excess profits, or corporate franchise taxes, which Seller may be required by any municipal, state, or federal law in the United States or any foreign country to collect or pay by reason of the production, manufacture, sale or delivery of the commodities delivered hereunder. Buyer shall also pay any such taxes on crude petroleum, or the transportation thereof, to the extent such taxes result in increased cost of the commodities delivered hereunder not compensated for by Section V hereof.

(b) Buyer shall also pay in addition to the prices as established in Section IV and V hereof, any now existing taxes, fees, or charges measured by the volume or sales price of the aviation gasoline delivered hereunder, imposed upon Seller by reason of the production, manufacture, storage, sale or delivery of such gasoline, unless Buyer or Seller is entitled to exemption from a given tax, fee or

charge by virtue of Buyer's governmental status; it being understood that Buyer now believes that both Buyer and Seller are entitled to such exemption. Seller represents that the taxes, fees and charges referred to in this paragraph have not been included in its computation of costs on which the prices set forth in Section IV hereof are based.

[fol. 71] (c) If in any case the parties cannot agree on the question as to whether or not Buyer or Seller is entitled to exemption from a given tax, fee or charge by virtue of Buyer's governmental status, the burden shall be upon Buyer to obtain a ruling in writing from a duly constituted and authorized governmental tax authority as to such exemption. Until such ruling is obtained Buyer shall pay the amount of the tax to Seller or to the appropriate tax collecting agency or make satisfactory arrangements with such tax collecting agency.

(d) Any addition of taxes to the prices as established in Sections IV and V hereof shall not be considered in arriving at the value of the gasoline delivered hereunder in connection with those portions of the contract referring to liquidated damages, repayment of advance or recoupment of advance, and such taxes shall be shown separately and be in addition to the price.

XIII. *Notices.*

Any notice to be given hereunder shall be in writing and may be personally delivered or sent by cable, telegram or registered mail to the party for whom intended at the address of such party as specified above. A notice personally delivered to either party must be personally delivered to an officer or manager thereof. Notice by registered mail shall be deemed to have been given at the expiration of that time after mailing which is normally required by the postal authorities to make delivery. Cabled or telegraphed notice shall be deemed given the day after sending the cable or telegram. Each party shall immediately send to the other by regular mail confirming copies of any notices sent by cable, telegraph or air mail. Either party may by notice as aforesaid change its address for notices thereafter.

XIV. *Entirety of Contract.*

This instrument contains the entire agreement between the parties in respect of the subject matter and there are no conditions, warranties, representations or stipulations relating thereto which are not merged herein. The right of either party to require strict performance shall not be affected by any previous waiver or course of dealing, unless such waiver be in writing signed by an officer or other duly authorized person and specify a duration sufficient [fol. 72] in time to embrace the matter in question. No modification shall be binding unless in writing and signed by officers of the parties. Authorization or ratification by the boards of directors of the parties shall not be required in respect of modifications.

XV. *Assignability.*

This contract shall be binding upon, and shall inure to the benefit of, the successors and assigns of the respective parties hereto; provided, however, neither party shall have the right to assign this contract without the written consent of the other party, except that Buyer may assign to any other governmental Agency, department, instrumentality or wholly government-owned corporation in which event Buyer shall remain liable.

XVI. *Statutory Compliance.*

(a) In carrying out this contract Seller agrees to comply with, and give all stipulations and representations required by applicable Federal laws and further agrees to require such compliances, representations, and stipulations with respect to any contract entered into by it with others incidental to or in connection with this contract as may be required by applicable Federal laws; and notwithstanding the generality of the foregoing, Seller further agrees that in the performance of this contract it will not discriminate against any worker because of race, creed, color or national origin.

(b) Seller is a corporation and this contract is made with it for its general benefit and no Member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that

may arise therefrom in violation of the law of the United States covering such matters.

XVII. *Right to Terminate.*

Seller shall have the right to terminate this contract within ninety (90) days of the date thereof, unless within said ninety (90) days it shall receive all governmental assistance which is available or necessary for the prompt completion of the expanded facilities which Seller will [fol. 73] erect and install hereunder, including, without limitation, priorities and allocations necessary for obtaining materials, equipment, supplies and crude petroleum, and assurances from the Treasury Department, in the form of closing agreements, that the advance payment provided for in Section VII hereof, or any part thereof, will not be treated as taxable income upon receipt by Seller, but that the ratable portions thereof will be treated as amounts received for products supplied, when and as such ratable portions are credited for that purpose hereunder. Failure so to terminate shall not constitute a waiver of any other rights of Seller.

In Witness Whereof, the parties hereto have executed this contract as of the date and year first above written.

Defense Supplies Corporation, by (Signature illegible), President.

Attest: (Signature illegible), Secretary.

Richfield Oil Corporation, by Chas. S. Jones, President.

Attest: Steve B. Banner, Secretary.

[fol. 74] EXHIBIT "A"

Item 1.

U. S. Army—Navy Supply

AN-VV-F-781	Sept. 26, 1940
Amendment No. 3	June 6, 1941
Knock Test Method	AN-VV-F-746

100 Octane Number by Method AN-VV-F-746
Tetraethyl Lead Limit 3.0 cc/Gal.

Item 2.

U. S. Army—Navy Supply

AN-VV-F-781	Sept. 26, 1940
Amendment No. 4	Nov. 24, 1941
Knock Test Method	AN-VV-F-746

100 Octane Number by Method AN-VV-F-746
Tetraethyl Lead Limit 4.0 cc/Gal.

Item 3.

U. S. Army—Navy Supply

ANF-28	Dec. 23, 1942

100 Octane Number by Method AN-VV-F-746, or 99 Octane Number by Method ASTM-D-357-41T S $\pm$ 1.25 cc. tetraethyl lead by Method AN-VV-F-748 Tetraethyl Lead Limit 4.0 cc/Gal.

[fol. 75] EXHIBIT B

I. (A). Seller represents that the base price set forth in Section IV (b) of the foregoing contract for 100 octane aviation gasoline includes a certain "catalytic cracking royalty sum" representing patent royalties which Seller expects to pay to a third party or parties; that said "catalytic cracking royalty sum" is calculated at a running

royalty rate of $0.05 per barrel of fresh stock charged to Seller's catalytic cracking operation, and is as follows:

	Item 3
Period before date of Seller's notification referred to in Section II (a) of the foregoing contract	none
Period after date of Seller's notification referred to in Section II (a) of the foregoing contract	$0.00132

I. (B). In the event that at any time during the term of the foregoing contract, there shall issue to any third party a patent license covering catalytic cracking operations of the type employed by Refiner, at a running royalty rate lower than $0.05 per barrel of fresh stock charged to said third party's catalytic cracking operation, then as between Buyer and Seller, the first receiving such information shall notify the other, and the base prices of all aviation gasoline thereafter delivered under the foregoing contract shall be adjusted by subtracting from such base price, an amount equal to said "catalytic cracking royalty sum" multiplied by a factor equal to $\frac{A}{B}$, where A equals the difference between $0.05 and said lower running royalty rate payable by said third party, and B equals the sum of $0.05; and Seller shall within sixty (60) days after the date of said notification by Buyer or Seller to the other, refund to Buyer an amount equal to the total number of gallons of 100 octane aviation gasoline delivered under the foregoing contract, between the date of such running royalty rate becomes payable by said third party and said date of notification, multiplied by (a) the amount of said "catalytic cracking royalty sum" and (b) by said factor $\frac{A}{B}$.

[fol. 76] I. (C). In the event that during the term of the foregoing contract Seller does not pay to any third party or parties the "catalytic cracking royalty sum" aforesaid, or any part thereof, then within sixty (60) days following the date of termination, cancellation or expiration of the foregoing contract, Seller shall refund to Buyer an amount

of money equal to the total number of gallons of 100 octane aviation gasoline sold to Buyer under the foregoing contract at a price including said "catalytic cracking royalty sum", multiplied by said "catalytic cracking royalty sum".

I. (D). In the event that at any time during the term of the foregoing contract, it shall be finally determined that Seller will not be required to pay said "catalytic cracking royalty sum" then Seller shall promptly notify Buyer and the base price of all aviation gasoline thereafter delivered under the foregoing contract shall be adjusted by subtracting from said base price an amount equal to said "catalytic cracking royalty sum"; and Seller shall within sixty (60) days after the date of said notification refund to Buyer an amount equal to the total number of gallons of 100 octane aviation gasoline sold to Buyer under the foregoing contract at a price including said "catalytic cracking royalty sum", multiplied by said "catalytic cracking royalty sum".

II. (A). Seller further represents:

(1) That the base prices for 100 octane aviation gasoline set forth in Section IV of the foregoing contract also include certain "contingent sums", as follows:

	Item 2	*Item 3*
Period before the effective date of the notification referred to in Section II (a) of the foregoing contract	$0.00113	$0.00155
Period after the effective date of the notification referred to in Section II (a) of the foregoing contract	$0.00096	$0.00096

(2) That said "contingent sums" represent patent royalties which Seller may or may not be obligated to pay to third parties with respect to the manufacture of cer- [fol. 77] tain "alkylate" constituents of aviation gasoline covered by the foregoing contract, according to a certain process to be employed by Seller. Said "contingent sums" have been calculated at the rate of $0.15 per barrel of total alkylate included in said aviation gasoline.

(3) That said "contingent sums" include the following "prepaid sums" as follows:

	Period before the effective date of the notification referred to in Section II (a) of the foregoing contract.		Period after the effective date of the notification referred to in Section II (a) of the foregoing contract.	
	Item 2	Item 3	Item 2	Item 3
Prior to July 1, 1943	$0.00047	$0.00064	$0.00019	$0.00019
From July 1, 1943 to November 16, 1944	0.00038	0.00052	0.00016	0.00016
On and after November 16, 1944	0.00023	0.00031	0.00009	0.00009

(4) That said "prepaid sums" represent certain sums of money which have heretofore been paid on behalf of Selier for licenses under certain alkylation patent rights of Universal Oil Products Company and Stratford Engineering Corporation. Said "prepaid sums" have been calculated upon the basis of 1,330 barrels of total alkylate at the rate of $0.062 per barrel of total alkylate manufactured prior to July 1, 1943, $0.050 per barrel of total alkylate manufactured from July 1, 1943 to November 16, 1944, and $0.030 per barrel of total alkylate manufactured after November 16, 1944.

II. (B). If, at any time, prior to one year after the termination of the Present Emergency, Seller shall in good faith become obligated to pay patent royalties to third parties having an established sulfuric acid alkylation patent licensing position at rates lower than those set forth hereinabove, Seller shall so advise Buyer, and the base prices of all aviation gasoline, if any, delivered under the foregoing contract after the date Seller becomes so obligated shall be adjusted by subtracting from each of the base prices set forth in Section IV of the foregoing contract, an amount equal to the respective "contingent sum" [fol. 78] applicable thereto, minus the respective "prepaid sum" applicable thereto, multiplied by a factor equal to $\frac{C}{D}$, where C equals the difference between $0.15 and the rate which Seller becomes obligated to pay to said third parties, and D equals $0.15, and Seller shall, within sixty (60) days after becoming so obligated, refund to Buyer an amount equal to the total number of gallons of aviation gasoline

delivered under the foregoing contract prior to the date Seller becomes so obligated under each base price, multiplied (a) by an amount equal to the respective "contingent sum" applicable to the said base price and (b) by said factor $\frac{C}{D}$.

II. (C). If any suit for infringement with respect to said "alkylate" constituents or the manufacture thereof is pending against Seller at the expiration of one year after the termination of the Present Emergency, no refund shall be made by Seller until final adjudication or settlement of such suit in good faith, but within sixty (60) days after such final adjudication or settlement, if the same establishes an obligation on the part of Seller to pay damages or other moneys at a rate lower than the royalty rate set forth hereinabove, Seller shall refund to Buyer an amount equal to the total number of gallons of aviation gasoline sold to Buyer under the foregoing contract under each base price multiplied (a) by the difference between the respective "contingent sum" and the respective "prepaid sum" and (b) by a factor equal to $\frac{E}{F}$, where E equals the difference between $0.15, and the rate which Seller becomes obligated to pay under such final adjudication or settlement, and F equals $0.15, it being expressly understood that Seller's said obligation, as the term is used herein, shall not include any expenses of settlement (as distinguished from actual payments to the party or parties with whom settlement is made) or costs of litigation.

II. (D). In the event that no suit for infringement is brought against Seller and Seller itself undertakes no obligation to pay any patent royalties to others with respect to said "alkylate" constituents or the manufacture thereof, prior to the expiration of one year after the termination of the Present Emergency, Seller shall, within sixty (60) days after the expiration of said one-year period, [fol. 79] refund to Buyer an amount equal to the total number of gallons of aviation gasoline sold to Buyer under this contract at each base price multiplied by a factor equal to G-H, where G equals the respective "contingent sum" applicable thereto, and H equals the respective "prepaid sum" applicable to said base price.

II. (E). In the event that at any time during the term of the foregoing contract, it shall be finally determined that Seller will not be required to pay said "contingent sums", then Seller shall promptly notify Buyer and within sixty (60) days after the date of such notification, Seller shall refund to Buyer an amount of money equal to the total number of gallons of 100 octane aviation gasoline so sold to Buyer under the foregoing contract at each base price multiplied by the factor G-H applicable to said base price.

II. (F). In no event shall the combined amounts of all the said "prepaid sums" which may be deducted from said "contingent sums" establishing the amounts of the refunds set forth in Sections II (B), II (C), II (D), and II (E) hereof exceed the total sum of Sixty Four Thousand Eight Hundred Dollars ($64,800) for the periods of the foregoing contract and the prior contract and any extensions thereof.

II. (G). In determining the effect of this Section II of this Exhibit B with respect to any obligation on the part of Seller to pay royalty on a paid-up or commuted basis, such royalty shall be considered as amortized at a rate not to exceed 10% per annum, or at such other rate as shall be determined by negotiations between the parties at the time the payment of such royalty on a paid-up or commuted basis is projected. In the event the parties fail to agree upon a mutually satisfactory rate of amortization, the question shall be determined by arbitration in accordance with Section XI of the foregoing contract.

II. (H). In determining the effect of this Section II of this Exhibit B with respect to any payment by Seller for past infringement, only that portion of such payment shall be considered which is ratably attributable to aviation gasoline sold under the foregoing contract.

[fol. 80] III. (A). Seller represents that the base prices for 100 octane aviation gasoline set forth in Section IV of the foregoing contract include certain "isomerization royalty sums" representing patent royalties which Seller expects to pay to a third party or parties; that said "isomerization royalty sums" are calculated at a running royalty rate of $0.05 per barrel of isomerized product from

Seller's catalytic isomerization operation, and are as follows:

	Item 2	*Item 3*
Period before the effective date of the notification referred to in Section II (a) of the foregoing contract	$0.00012	$0.00017
Period after the effective date of the notification referred to in Section II (a) of the foregoing contract	$0.00008	$0.00008

III. (B). In the event that at any time during the term of the foregoing contract, there shall issue to any third party a patent license covering catalytic isomerization operations of the type employed by Seller, at a running royalty rate lower than $0.05 per barrel of isomerized product from third party's catalytic isomerization operation, then as between Buyer and Seller, the first receiving such information shall notify the other, and the base prices of all aviation gasoline thereafter delivered under the foregoing contract shall be adjudged by substracting from each of the said base prices, an amount equal to the "catalytic isomerization royalty sum" applicable thereto multiplied by a factor equal to $\frac{J}{K}$, where J equals the difference between $0.05 and said lower running royalty rate payable by said third party, and K equals the sum of $0.05; and Seller shall within sixty (60) days after the date of said notification by Buyer or Seller to the other, refund to Buyer an amount equal to the total number of gallons of 100 octane aviation gasoline delivered under the foregoing contract, between the date such running royalty rate becomes payable by said third party and said date of notification, multiplied by (a) the amount of the "catalytic isomerization royalty sum" and (b) by said factor $\frac{J}{K}$.

[fol. 81] III. (C). In the event that during the term of the foregoing contract Seller does not pay to any third party or parties the "catalytic isomerization royalty sum" aforesaid, or any part thereof, then within sixty (60) days

following the date of termination, cancellation or expiration of the foregoing contract, Seller shall refund to Buyer an amount of money equal to the number of gallons of 100 octane aviation gasoline sold to Buyer under the foregoing contract at a price including said "catalytic isomerization royalty sum", multiplied by said "catalytic isomerization royalty sum".

III. (D). In the event that at any time during the term of the foregoing contract, it shall be finally determined that Seller will not be required to pay said "catalytic isomerization royalty sum" then Seller shall promptly notify Buyer and the base price of all aviation gasoline thereafter delivered under the foregoing contract shall be adjusted by subtracting from said base price an amount equal to said "catalytic isomerization royalty sum"; and Seller shall within sixty (60) days after the date of said notification refund to Buyer an amount equal to the total number of gallons of 100 octane aviation gasoline sold to Buyer under the foregoing contract at a price including said "catalytic isomerization royalty sum", multiplied by said "catalytic isomerization royalty sum".

IV. (A). In the event that Seller make refunds to Buyer in accordance with the provisions of Sections I (C), II (D) and III (C) hereof, and in the event that at any time within six (6) years after the termination of the Present Emergency a suit or suits for infringement with respect to said "alkylate" constituents or the manufacture thereof, or with respect to said catalytic isomerization operations, shall be brought against Seller and such suit or suits shall result in final adjudication or settlement which shall establish an obligation on the part of Seller to pay damages or other moneys in satisfaction thereof, Buyer shall repay to Seller from the particular refund applicable in each case a sum of money, which shall in no event exceed the total amount [fol. 82] of that refund, for the payment solely of said damages or other moneys applicable to that case, it being expressly understood that Seller's said obligation, as the term is used herein, shall not include any expenses of settlement (as distinguished from actual payments to the party or parties with whom settlement is made) or costs of litigation; provided, however, that with respect to such

settlement, no repayment shall be made by Buyer unless Buyer shall first have given in writing its approval to such settlement.

IV. (B.) With respect to such suit or suits for infringement referred to in Section IV. (A) hereof, Seller agrees that it will defend, with all due diligence and at its own expense, such suit or suits at least until an adjudication shall have been made therein by a court of record having primary jurisdiction thereof, or until a settlement approved by Buyer, as above provided, has been effected. Seller further agrees to notify Buyer promptly of the institution of each suit and shall permit Buyer at its own election, to be represented therein by counsel of its own choice and at its own expense.

IV. (C). If an adjudication adverse to Seller has been made in any such suit by said court of record having primary jurisdiction thereof, and if no settlement approved by Buyer has been effected previously, and Seller shall, in its best judgment, elect not to appeal from such adverse adjudication or to continue the defense of such suit, then, in that event, Seller agrees to give timely notice to Buyer and agrees that Buyer may, at its election and at its own expense, continue the defense of such suit, file and perfect appeals to courts of higher jurisdiction, and do such other things as Buyer believes necessary or desirable to obtain a final adjudication or settlement of such suit, and in such event, Seller agrees that Buyer may use its name for all proper purposes connected with the continuance of such suits, and that it will cooperate fully with Buyer in any proper and legal manner necessary to aid Buyer in the furtherance of the defense of such suits.

IV. (D). As used in Sections II and IV of this Exhibit B, the term "Present Emergency" shall mean the period that the United States is at war or the period of the existing National Emergency as declared by the President to exist in his proclamation dated May 27, 1941, whichever period is the longer.

[fol. 83] V. Seller further represents that no patent royalties other than those set forth in Sections I, II and III of this Exhibit B have knowingly been included in the base prices set forth in Section IV of the foregoing contract.

VI. Seller further covenants that any "catalytic cracking royalty sums", any "contingent sums" and any "catalytic isomerization sums" paid by it and included within said base prices shall be paid in good faith only to a third party or parties having a licensing position recognized by a substantial portion of the refining industry to license the catalytic cracking process, the sulfuric acid alkylation process, and the catalytic isomerization process, respectively, of the type employed by Seller.

[fols. 84-268] *Guarantee by Reconstruction Finance Corporation*

In consideration of the execution of the within contract and as an inducement to Richfield Oil Corporation to enter into said contract, Reconstruction Finance Corporation does hereby guarantee the full and complete performance of all of the terms and conditions of said contract on the part of Defense Supplies Corporation (a subsidiary of Reconstruction Finance Corporation) to be performed at the time and in the manner therein provided.

In witness whereof, Reconstruction Finance Corporation has caused this Guarantee to be executed by its officers thereunto duly authorized as of February 20, 1943.

Reconstruction Finance Corporation by Charles B. Henderson, Chairman.

Attest: (signature illegible), Secretary.

[fol. 269] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 6896-Y

UNITED STATES OF AMERICA, Plaintiff

vs.

RICHFIELD OIL CORPORATION, Defendant

OPINION—Filed July 2, 1951

Appearances:

For Plaintiff: William C. Dixon, Special Assistant to the Attorney General; Theodore M. Alexander, T. Keister

Greer, Theron M. Hall, Lawrence M. Somerville, Special Attorneys, Anti-Trust Division, Department of Justice, Los Angeles, California.

For Defendant: William J. DeMartini, Robert E. Paradise, Los Angeles, California.

[fol. 270] YANKWICH, District Judge:

This is an action instituted by the United States Government against Richfield Oil Corporation,—to be referred to as Richfield,—a corporation organized under the laws of the State of Delaware, with offices and its principal place of business in Los Angeles, California, in which the Government seeks equitable relief under Section 4 of the Act of the Congress of July 2, 1890, commonly referred to as the Sherman Anti-Trust Act (1), and under Section 15 of the Act of the Congress of October 15, 1914, as amended, commonly known as the Clayton Act (8). The Government seeks to prevent and restrain violations of Section 1 of the Sherman Anti-Trust Act (3) and Section 3 of the Clayton Act (4).

I

The Nature of the Controversy

Richfield is engaged in the business of acquiring and developing oil reserves and producing, transporting, refining and marketing petroleum and petroleum products therefrom in the States of California, Oregon, Washington, Nevada, Idaho, Arizona, Texas and New Mexico. No evidence was offered relating to activities in the States of Texas and New Mexico, but the pleadings alleged, and the evidence in the case showed, that, in the disposition of its products in the six States named, Richfield availed itself of various forms of outlets which were referred to as L-O (leased-out) stations, and "dealer" stations, designated as 337 and 3-C stations. Through regional representatives, merchandisers, [fol. 271] salesmen and others, whose relation to the company need not be gone into, the petroleum products were supplied to the operators of these stations.

Richfield also deals in automotive accessories manufactured by others, which were referred to during the trial as "sponsored products". These consist of replacement parts

and articles sold and used in servicing or repairing automotive vehicles. These include tires, tubes, batteries, spark plugs, oil filters, fan belts, battery cables, lamp bulbs, fuses, windshield wiper blades, tire repair and vulcanizing kits, anti-freeze, tire chains, and similar items.

During the trial, these were referred to as "TBA". It is the assertion of the Government that the various agreements, written and oral, existing between Richfield and the operators of these three types of stations, bind them, in effect, to secure *their entire requirements*, both as to petroleum products and TBA, exclusively from Richfield; that they are forbidden to handle petroleum products of any other company or to handle accessories competitive with those distributed or sponsored by Richfield.

In brief, the Government claims that these contracts are an unreasonable restraint of interstate trade or commerce, in violation of Section 1 of the Sherman Act, and substantially lessen competition and tend to create a monopoly in a line of commerce, in violation of Section 3 of the Clayton Act.

Richfield has denied that there is a violation of either statute in their relations with any of the groups of dealers mentioned, either as to their petroleum products, or as to the sponsored TBA products.

[fol. 272]

II

The Commerce Involved

Despite voluminous testimony, the scope of the inquiry is rather narrow. The interstate origin and nature of the commerce of both the petroleum products and TBA is established beyond dispute. The petroleum products originate in oil reserves and producing wells and bulk plants and refineries operated in California and elsewhere, the products of which move across state lines continuously to supply the various stations. Richfield has oil reserves and producing wells in certain oil fields in California. Crude oil is transported by Richfield from producing wells in California to its refineries located at Watson and Vinvale, California. At the Watson refinery crude oil is refined into gasoline and other petroleum products. Richfield owns and operates two natural gasoline plants in California. Gaso-

line and other petroleum products refined at the gasoline plants in California are shipped by Richfield to its refinery at Watson, California. The petroleum products refined at its refinery at Watson, California, are, in some instances, shipped by Richfield from the refinery to bulk plants located in California, Oregon, Washington, Arizona, Nevada and Idaho. Gasoline and petroleum products are stored in bulk plants, and sold and delivered from time to time to service stations located in the respective states in which the bulk plants are located. Richfield maintains pipe lines in California used by it in transporting crude oil and petroleum products between points solely in California. It [fol. 273] maintains automotive vehicles used in making deliveries of petroleum products from bulk plants to service stations located in the respective states in which the bulk plants are located.

Richfield owns 107 bulk plants in California, of which 23 are operated by Richfield and 84 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 1577 service stations in California. It owns 35 bulk plants in Oregon, of which 2 are operated by Richfield and 33 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 388 service stations in Oregon. Richfield owns 36 bulk plants in Washington, of which 4 are operated by it and 32 by commission agents, and from which bulk plants petroleum products are distributed by Richfield and commission agents to 646 service stations in Washington. Richfield owns 7 bulk plants in Nevada, all of which are operated by commission agents, and from which plants petroleum products are distributed by commission agents to 39 service stations in Nevada. Richfield owns 5 bulk plants in Idaho, all of which are operated by commission agents, from which petroleum products are distributed by commission agents to 56 service stations in Idaho. Richfield owns 22 bulk plants in Arizona, of which 2 are operated by Richfield and 20 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 190 service stations in Arizona. In a few instances, petroleum products have been delivered from bulk plants in one state to service stations located in other states.

The sponsored products are manufactured at various industrial plants throughout the United States, from which [fol. 274] they find their way first to the storerooms of the authorized Richfield distributors, and then to the shelves of the individual station operators. So there is a constant flow of interstate commerce in the operations of the defendant. (5)

The competitive products, both petroleum and TBA, which were kept out of these stations as the result of the agreements, were manufactured at various places in the United States. So, in this respect also, if the practices of which the Government complains stand proved, they unquestionably affect the flow of goods and products in interstate commerce. (6) The amount of commerce involved satisfies all the requirements of substantiality laid down by the cases. (7) The anti-trust laws forbid practices through which competitors are

> "shut out of the market by a provision that limits it (a product), not in terms of quality, but in terms of a particular vendor." (8)

And, as said by the Supreme Court in another case:

> "The anti-trust laws are as much violated by the prevention of competition as by its destruction." (9)

Back of this is the fundamental determination embedded in the anti-trust laws to maintain our national economy free by keeping it competitive. The Supreme Court has expressed this thought very recently:

> "The heart of our national economic policy long has been faith in the value of competition. In the Sherman [fol. 275] and Clayton Acts, as well as in the Robinson-Patman Act 'Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent.'" (10)

A few statistics supplied by Richfield, and culled from the record, will suffice to demonstrate readily that the commerce affected is substantial. The number of L-O stations in 1950 was 1343. The number of 337 stations was 1361. The 3-C stations numbered 261. The Government,

by counting the separate written agreements, which go to make up each unit, including the painting agreements, arrives at a total of 4581. If to these are added the oral arrangements affecting the stations, we have a total of 7546 written and oral agreements.

The written contracts are approved at one of Richfield's divisional offices, of which there are three located in the States of California and Washington. The contracts come to the respective offices in those States from various other States for approval. Some of the contracts are required to be approved at the main Richfield office in Los Angeles.

The gallonage of gasoline distributed in 1950 through the L-O stations was 160,795, of the money value of $23,790,-968.00. The gallonage of gasoline distributed through the 337 stations during the same year was 67,476, with a money value of $10,64,158.00. As to the 3-C stations, the gallonage was 20,385, and the money value $3,069,987.00. For the same year the gallonage of motor oils and greases was, as to all types of stations, 3,491,369, of the money value of $2,546,127.59. For the same year, the money value of [fol. 276] tires and tubes sold to all three types of stations was $2,646,400.07, of batteries, $48,040.37, and of other accessories, $956,412.96. The interstate nature of the commerce involved and its substantiality, both from the standpoint of the number of outlets involved and the quantity and value of the products handled, being evident, the pattern of our inquiry becomes very narrow. It is reduced to the problem whether the agreements through which this commerce was handled are of the type condemned by the decision in the Standard Oil Case (11) decided by me in 1948, and affirmed by the Supreme Court. (12)

It is to be borne in mind that the opinion of the Supreme Court contented itself with the determination that the agreements there involved violated Section 3 of the Clayton Act. Here, we are concerned with the alleged violation of both acts. And the case calls for the determination of both questions.

But, while the same principles are to be applied to the three different outlets, it is necessary to examine separately their characteristics, in order to determine whether there is any difference (a) as to the relation existing

between the operators and Richfield, and (b) the restrictive practices in effect.

III

The Leases on L-O (Leased-Out) Stations

The problem is simplified as to the L-O stations by the Richfield admission that the oral understandings under which the leases are made, and for the violation of which the leases are forfeited under the 24-hours' termination [fol. 277] clause, to be referred to, not only provide but *demand* that Richfield petroleum products and Richfield-sponsored TBA products be handled exclusively and without deviation.

So the main consideration as to these stations is the relations which control them. The extent of the commerce affecting these stations has already been adverted to. It should be added that Richfield claims an investment in these stations as of December 31, 1950, of $19,542,082.58, of which the cost of the land purchased represents $11,213,657.33, and the cost of improvements installed, $8,328,425.25. The latter figure was deducted as depreciation for tax purposes over a period of five years. The figures as to improvements relate chiefly to the stations themselves, and adjunct buildings and the permanent equipment. They do not include improvements such as tanks, pumps, compressors, hoists, neon signs, hiboys and the like.

In justification of the investment, and, for that matter, of the entire policy, Richfield asserts that once "the shooting war" was over, and the purchase of gasoline by Government agencies had decreased, it was *compelled* to find an outlet for the increased refining facilities which it had built during the war period, and that the only certain way of securing an assured market was through controlled units.

Intent and purpose are an element in a case involving violation of Section 2 of the Sherman Act (13). But such violation is not concerned with a specific intent. And a specific intent, or good motive, for that matter, is not [fol. 278] material when we deal with Section 1 of the Sherman Act (14), or Section 3 of the Clayton Act (15). The determining consideration is the effect of a particular practice on interstate trade or commerce. Other considera-

tions, *such as economic necessity,* do not, and should not enter into our inquiry whether the practices here involved violate either statute. (16)

Very recently the Supreme Court rejected a contention that the anti-trust statute should not be given full effect in a particular field, in view of certain current foreign trade conditions. (17) The argument is just as valid when applied to market conditions as to petroleum and allied products in a specific area in this country. Economic considerations are relevant in determining legislative policy. They may be important in interpreting the limit of that policy. They do not constitute an excuse for the violation of the legislative policy declared in a statute.

These preliminary observations clear the way for a consideration of the nature of the arrangements under which the L-O stations were operated. The foundation of the relations was the service station lease, denominated Form 542. It was prepared by Richfield, underwent several changes through the years, and, in its final form, as it appears in this case, it was an elaborate lease containing fifteen different clauses setting forth the conditions governing the transfer of the property.

The *habendum* clause of each lease leases the described real property and the improvements and facilities thereon [fol. 279] to the designated lessee for a definite period of time, subject to a 24-hours' termination clause, at a specified rental per month, payable in advance on the first day of each of the calendar months. In addition to this, the lessee agrees to pay as rental a sum equivalent to the total number of gallons of gasoline in excess of a certain stated maximum, delivered to the premises during the month for which payment is being made for resale and distribution, the rate being fixed for each of the twelve months of the year, on the basis of the excess over a definite amount of gallons. Richfield has the right to demand a deposit of cash or bond to secure the payment of the rent in amount equal to the average rent payable.

The lease limits the use of the premises to the operator of a gasoline station, prohibits the use for any other or an unlawful purpose, and forbids the commission of a nuisance by the lessee. The prohibition by law of the

continuance of the business terminates the lease. There follow provisions placing upon the lessee the duty to maintain the premises and the improvements in good repair and a clean and safe condition, and prohibiting the making of changes or alterations without the permission of the lessor. The remaining clauses may be summed up briefly. The lessee, upon expiration of the lease or its termination, agrees to surrender the premises in as good a condition as when received, wear and tear excepted. Destruction by fire terminates the lease. The lessee is responsible for all charges for utilities. Failure to comply with the terms of the lease, default in payment of rent, bankruptcy or in- [fol. 280] solvency, the levying of an attachment, assignment or execution, or the institution of any other legal proceedings affecting the premises or any of the equipment on them, is ground for termination without notice. The lease is not assignable, either voluntarily or by operation of law. And the lessee agrees to indemnify the lessor against any claims for injury to property or person occurring on the premises during the operation of the lease by himself, his agents or employees. There follow the usual general clauses protecting against waiver of breach, making provision for attorney's fees for the lessor in case of suit, and designating the place to serve notice, and *merging into the instrument all other agreements.*

IV

The Nature of the Lessee's Interest

If this instrument is assayed by the accepted tests which determine the relation of landlord and tenant, the conclusion is inescapable that it is a lease. For we have a relation which is the result of specific agreement, which calls for (a) a fixed term, (b) at a determined rental, (c) by which a specific estate passes to the tenant, (d) who takes exclusive possession of the premises against all the world, including the owner, (e) all the lessee's rights being subordinated to the primary right to the fee of the owner, and (f) subject to reversion to him at the end of the term, or on termination of the lease. (18)

Implicit in the contract is the lessee's assumption of

obligation and responsibility for his own acts upon the premises and those of his employees in their relation to [fol. 281] the public, who come in contact with them during the time of his dominion. The lessee is not the employee of Richfield. Richfield pays him no wages or other remuneration. He must carry his own workmen's compensation. He is not carried on their books as an employee for the purpose of social security taxes or any of the withholding taxes, state or federal, incidental to the employer-employee relationship. Richfield is not required to withhold any moneys from him for income tax purposes. Neither are they required to perform any of the duties just mentioned as to any of the employees who may assist the lessee in the conduct of the station or of any auxiliary repair work upon the premises. The lessee is solely responsible for his own conduct and that of his employees which may cause damage to the person or property of others. In brief, it would be difficult to find an instrument which so completely makes, by its own terms, the lessee master of the domain covered by the lease as does this lease. He is certainly as independent as any lessee is. And the relationship is no different than that found in the "leased-out" stations in the Standard case. (19)

When, in law, we speak of "an independent contractor," or "an independent business man," we deal with a practical concept, not with a philosophical phrase. We mean a person who, in the performance of a particular contract, or in the conduct of his business, acts chiefly *for himself* and *for his own benefit and profit*, and *not* for others and the benefit and profit of others. And this is true, even though, as in every contract, the other party to the contract may also derive benefits. Mutuality of benefits lies behind every contract. And the fact that a party to such contract may derive a benefit or impose conditions in the carrying on of [fol. 282] an enterprise which transcend the usual conditions, does not destroy the independent character of the other party.

In a sense, in this complex and interdependent world, no one is really independent. But when, through a formal and written instrument, a relationship is established by which exclusive possession and control of property is

turned over to another, in exchange for a specified rental with full responsibility for the conduct of the business falling upon the lessee, with all profit or loss accruing entirely to him and not to the transferor, the relationship satisfies all the requirements of an independent enterprise. And when a corporation like Richfield deals with such an enterprise, it cannot be said to be dealing *with itself*, as though the estate it created were nothing and the person in charge, to whom possession was turned over, is a mere employee because, under clauses not contained in the contract, they supervise his actions, regulate,—to some extent, —his personal appearance, and do other things, some distinctly illegal, as will presently appear.

In this respect, the Timkin case, already referred to, is very revealing. It involved a prosecution under Section 2 of the Sherman Act. It was Timkin's contention,—*as it is the contention of Richfield*,—that certain wholly-owned subsidiaries were *so controlled* by them, that, in reality, *they were not other corporations* with which they could conspire to violate the Act. But the Supreme Court declined [fol. 283] to allow the control to destroy the existence of the units as separate business entities, and held that the law was violated when Timkin engaged in the prohibited acts *with its own subsidiaries*. Just as Richfield here would have us characterize their relationship with the L-O stations by some name unknown to common-law categories, Timkin, in that case, resorted to the term "joint venture" to avoid the charge of illegality. But the Supreme Court's answer was brief and decisive:

> "The fact that there is common ownership or control of the contracting corporations does not liberate them from the impact of the antitrust laws. E. G. Kiefer-Stewart Co. v. Seagram & Sons, supra at 215. Nor do we find any support in reason or authority for the proposition that agreements between legally separate persons and companies to suppress competition among themselves and others can be justified by labeling the project a 'joint venture.' Perhaps every agreement and combination to restrain trade could be so labeled." (20)

The principle which the Supreme Court applied is not new. That Court has repeatedly declared that

> "common ownership and control does not liberate corporations from the impact of the anti-trust laws." (21)

This indicates clearly that the principle is applicable whether we are dealing with a monopoly case under Section [fol. 284] 2 of the Act—as the Timkin case was,—or a case in restraint of trade under Section 1 of the Act. Rightly. For in all these cases, the Courts have insisted

> "reality must dominate the judgment." (22)

And, if control of instrumentalities which results in abolishing competition among them were sufficient to relieve the parties of the effect of the agreement on interstate commerce, the purpose of the Act could be subverted by the establishment by large industrial concerns of "puppet" outlets tied to the parent organization by the most restrictive agreements which would not only unreasonably restrain trade and lessen competition, but actually destroy it.

In interpreting this and other statutes, we must eschew the tyranny of words or labels. We must, in each case, get behind the façade which the organization has created,—as did the Supreme Court in the Masonite case when it went behind a del credere agency, which, at first blush, seemed to be a fiduciary relationship established by the concern for its own purposes, and found, instead, a means for monopolization. The Court did not then hesitate to declare the agency a mere cloak for restraints:

> "So far as the Sherman Act is concerned, the result must turn not on the skill with which counsel has manipulated the concepts of 'sale' and 'agency' but on the significance of the business practices in the term of restraint of trade." (23)

[fol. 285] In the light of these norms, we continue our analysis of the relations established by the written lease. The operator pays for his gasoline and the petroleum products sold to him by Richfield. They are not merely consigned to him. Upon execution of the lease, if he was

preceded by another lessee, he pays for the inventory of petroleum products on the premises, and of the approved TBA products. He is responsible for credit losses, except such as result from extension of credits to customers carrying Richfield cards. If we consider the provision for 24-hours' termination as valid, the lessee has, at the worst, *a tenancy at will.* And in the American law of landlord and tenant, this is an estate carved out and independent of, but subordinate to, the estate of the transferor. (24) While the ancient common law did not favor this form of estate, it recognized it. Indeed, even in the absence of a statute the courts of England required a notice to quit in order to terminate the estate. (25) State courts, including those of California, have followed the trend of turning an estate at will into an estate for a definite term whenever, through the method of paying rent, or other provisions in the lease, it was apparent that a definite term was contemplated. (26)

So the Courts have done all in their power to give to this estate, so humble in the federal law, a higher standing in accordance with their desire to achieve a more rational and just relationship than strict application of antiquated feudal principles would warrant. And it is interesting to note that in a very early California case,—[fol. 286] even before the law as just stated became crystallized,—the Courts ranked the rights of a tenant at will *so much higher* than those of an employee that they rejected the contention of one who was the caretaker of property of another that he be considered a tenant at will, saying:

> "Such a principle is not countenanced by the authorities, and its adoption would lead to very inconvenient results. *It would give to servants and agents novel and embarrassing powers over employers and their property.*" (27) (Emphasis added.)

And I am inclined to think that, because of the conflict of the 24-hours' termination clause with the monthly rental provisions, Courts would consider the tenancy created by the L-O agreements, *at least,* a month-to-month tenancy *terminable only* upon the minimum notice required in such cases.

In the case before us, there is no evidence that it was ever used as a means for terminating the lease for the in-

fraction of any of its express conditions. It was used only to enforce the illegal restraints superimposed orally. Indeed, it was the boast of the representatives of the Company that so long as the provision as to exclusive dealing in Richfield products or Richfield sponsored TBA products were complied with, the tenancy was of practically *unlimited duration*, and that prospective lessees *were so informed*.

[fol. 287] V

The Oral Requirements Restrictions

So we come to the question: Is the independence, both legal and factual, created by the lease destroyed by the oral agreements and conditions superimposed by Richfield and which binds the lessee to the distribution of Richfield petroleum products and Richfield sponsored TBA products under penalty rigidly enforced,—as the record shows,—of ouster unceremonious on 24-hours' notice, sometimes effected between sundown and sunup of successive days? Richfield insists that it is. The fact of control is admitted in their Answer, which states:

> "That each of the service stations owned by Richfield or leased by Richfield from a party other than the operator thereof, was acquired and/or constructed by Richfield as an outlet for the sale of Richfield petroleum products to the motoring public; and that each operator of any such service station has been selected and trained by Richfield and has been permitted by Richfield to occupy such service station and use Richfield's land, building, facilities and equipment on a temporary basis subject to termination on 24-hours' notice."

Evidencing the rigor with which the control was exercised, there were shown at the trial instances of termination of the lease for failure to conform to the restrictions as to [fol. 288] the products to be sold. On termination, no matter how long the occupancy had been, the lessee was not allowed to choose his successor, even in cases where the latter had agreed to purchase from him not only the petroleum products and approved products, but also the non-approved items on his shelves or equipment which he has installed.

On termination, it was Richfield's policy to instruct the buyer that he "was not required" to buy the non-sponsored TBA products or other equipment owned by the lessee. And in all instances in which the suggestion was made, "he did not buy". Nor did Richfield allow the lessee to capitalize on his good will. On termination, the lessee could receive no compensation for good will, even when he found a buyer willing to pay for the good will which the long occupancy and the efforts of the lessee had created at the particular station.

These and other incidences of control, not spelled out in the lease, but made effective through Richfield's exercise of power, led Richfield to insist at the trial that their control over the L-O type station *was*, in effect, *ownership*. And they sought to apply to this ownership my statement in the Standard case that restrictive agreements are not prohibited as to wholly-owned outlets. (28)

We need not quarrel with the statement referred to, although the form in which it was cast indicates clearly that it applied only to the facts there before the Court. However, the discussion which precedes indicates that the Supreme Court has held repeatedly that even ownership does [fol. 289] not stand in the way of the application of the restraint provisions of the Sherman Anti-Trust Law. (29) And the obvious answer to the claim of ownership is the same which Courts give in tax cases to contentions of taxpayers who, after having chosen to do business under a certain form of organization, try to have us disregard it, on the ground that they were, in reality, "doing business with themselves". (30) And the answer is that a person choosing a particular entity in order to achieve certain results is not in a position to ask us to disregard it, when he wishes to avoid results unanticipated.

So Richfield is tied to the form they chose. And if it does not give them immunity from the admitted restraints they impose through it, they must bear the consequences of their voluntary act, regardless of any contrary intention they may have had in choosing it.

VI

The "Created" Market

Richfield contends that it "created" these instrumentalities for its own purpose. For this reason, they argue that there could be no restraint of trade, because no competition is involved. (31) No case will be found which supports the contention that the mere creation of an exclusive form of outlet is, in itself, sufficient to avoid the consequences of the anti-trust laws. Indeed, one of the older cases (32) to which the case cited by Richfield referred as its authority, specifically holds that contracts, no matter how worded, will be scrutinized in order to determine [fol. 290] whether they have been entered into or are to be performed for the apparently legitimate purpose which they specify on their face or *for the purpose of restraining the free flow of commerce.* We quote the language of the Court:

> "The court in the Standard Oil Case construed the act as intended to reach only combinations unduly restrictive of the flow of commerce or unduly restrictive of competition, and, illustrating what were such undue or unreasonable combinations, it classed as illegal (p. 58) 'all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of *reasonably forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were considered to be against public policy.*' " (33) (Emphasis added.)

[fol. 291] And in the very case referred to, the following is given as the purpose of the anti-trust statutes:

> "Combination which unreasonably limits competition which would otherwise exist between persons in similar businesses is illegal. A suppression of competition necessarily restrains commerce. Board of Trade v. United States, 246 U. S. 231, 38 S. Ct. 242, 62 L. Ed. 683, Ann. Cas. 1918D, 1207. The purpose of the anti-trust laws—an intendment to secure equality of opportunity —is thwarted if group-power is utilized to eliminate a competitor who is equipped to compete." (34)

The vice of the entire argument lies in the fact that it permits suppression of competition *at the inception of an enterprise,*—a practice against which the Clayton Act is specifically directed. As is shown in this case,—a concern such as Richfield, through investment of large sums of money in real property and on stations, could so tie the hands of the sellers of its products as to completely shut out competition. If the fact that no outlets for the product existed before Richfield entered the field, would give complete immunity, regardless of the purpose for which the outlets are established and of the manifest intent to keep out competitors and to deny to the public at large access to competitive products through these outlets, then the anti-trust laws could be circumvented easily.

[fol. 292] But the argument lacks substance. The trade was there, it being the custom for which it was bidding. And, if in bidding for it, it eliminated others and prevented their access to the products, the market is unreasonably restrained. As said by a unanimous Supreme Court:

> "In order to establish violation of the Sherman Act, is it not necessary to show that the challenged arrangement suppresses all competition between the parties or that the parties themselves are discontented with the arrangement? The interest of the public in the preservation of competition is the primary consideration. The prohibitions of the statute cannot '. . . be evaded by good motives. The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot set up against it in a

supposed accommodation of its policy with the good intention of parties, and it may be, of some good results.' " (35)

Neither the Curtis case (36) nor the Masonite case (37) warrants the conclusion that the creation of individual outlets creates such immunity. In the Curtis case the Court found that the contracts under consideration created an "agency" between the parties which had none of the features condemned by the anti-trust law. Such relationship found to have been legitimately entered into by the Federal Trade Commission on findings of fact conclusive upon the [fol. 293] Court, the Court found no legal reason to condemn, saying:

"The engagement of competent agents obligated to devote their time and attention to developing the principal's business, to the exclusion of all others, where nothing else appears, has long been recognized as proper and unobjectionable practice. The evidence clearly shows that respondent's agency contracts were made without unlawful motive and in the orderly course of an expanding business. It does not necessarily follow because many agents had been general distributors, that their appointment and limitation amounted to unfair trade practice. * * * Effective competition required that traders have large freedom of action when conducting their own affairs. Success alone does not show reprehensible methods although it may increase or render insuperable the difficulties which rivals must face. The mere selection of competent, successful and exclusive representatives in the orderly course of development can give no just cause for complaint, and, when standing alone, certainly affords no ground for condemnation under the statute." (38)

[fol. 294] The Masonite case has already been commented on. (Part IV of this Opinion) There the Court found no difficulty in condemning what were apparent del credere agencies as means for illegitimate restraint. Convinced that the object of the establishment of the agency was to restrain commerce, the Court found no difficulty in disre-

garding the form. Richfield has enunciated an abstract concept which finds no justification in the history or interpretation of the anti-trust laws. To follow it would mean to turn defiance of law into a virtue, to make legitimate the very *means* of restraint. Granted that a business may create its own outlets, it can do so only by making them *its agency in truth and fact.* It cannot do so by creating a well-recognized legal estate, superimpose on it oral limitations, the object of which is to restrain trade, and then claim legitimacy for this very restraint. Even exclusive agencies, if they are of a character as to result in business restraints of commerce, would be violative of the Clayton Act, even if, at their creation, they did not violate the Sherman Act.

So Richfield cannot, by creating the relationship of landlord and tenant, long and anciently known to our law, with all the responsibilities that such relationship imposes on the transferee, restrain trade through that outlet by imposing illegitimate oral contracts which restrict the transferee to the handling of Richfield's products or Richfield's sponsored products. Even if it be admitted that if the outlet were its "exclusive agency", the limitation could be imposed as an incident of ownership, under the form it has chosen, [fol. 295] Richfield cannot deny to the dealers the right to deal with other suppliers as to their products, or to deny to such suppliers access to the dealers, so that these varied products may reach the public, whose protection the anti-trust laws seek. The law, as the Supreme Court has stated,

> "does not compel competition." (39)

But restrictive contracts are condemned because of their

> "denial to commerce of the supposed protection of competition." (40)

And, as said in the same case, when such restrictions

> "are parts of a plan, the mere projecting of which condemns them unconditionally, the realization of the plan itself must also be proscribed." (41)

It follows that the L-O operators are, by the instrument of their creation, independent business men, as that concept is understood in anti-trust law, and that the imposition on

them by oral agreements of restrictive conditions limiting their dealings to Richfield products and Richfield sponsored TBA products, and denying access to other dealers in petroleum and accessories to these stations, and, through them, to the public, is violative of both Section 1 of the Sherman Anti-Trust Law and Section 3 of the Clayton Act.

VII

The "Dealer" Stations

We come now to the agreements under which the other stations are operated. We refer to the 337 stations and to [fol. 296] the 3-C stations. As to these stations, Richfield admits that they are independent. Their chief witness and general manager in charge of sales, W. G. King, admitted that they were such and he applied the designation to station dealers "who owned their places of business or leased them from others than Richfield."

The problem as to these stations is, therefore, a factual one: Do the written instruments under which these stations dispense Richfield products and Richfield sponsored TBA products and the oral agreements accompanying them restrict them to the handling of these products exclusively?

Richfield has classified these stations as "dealer stations". They include service stations which are owned by service station dealers or leased by them from a lessor other than Richfield. Richfield has leased these stations from the dealers, and, in turn, has sub-leased them back to the dealers and has entered into a written sales contract with each dealer covering the petroleum products to be handled by the dealer. Each of the units into which this group is divided—377 and 3-C—is governed by multiple instruments.

In the case of the 337 stations, the fundamental instrument is a service station lease, originally running from the owner to Richfield, and an operator's lease from Richfield to the operator, the operator assuming, in substance, the obligations of Richfield under their primary lease, with some modifications at times as to the rent paid. The record [fol. 297] discloses that in some instances, the rental received by Richfield from the operator is less than it pays under its lease with the owner.

For brevity's sake, we omit the description of the terms, which are the usual terms in such leases. Their enumeration would not aid the discussion, because the tie-in as to these stations is represented by an operator's sales contract whereby the operator agrees to purchase from Richfield a *definite* quantity of gasoline, lubricating oil and greases for each month. The evidence in the record shows that the computation intended to cover 80 per cent of the estimated requirement.

As to the other stations, presumably stations owned by the operator as to which no landlord and tenant relationship exists between Richfield and the operator or Richfield and the original owner, the tie-in agreement consists of a sales contract of the type already described and a painting agreement whereby Richfield agrees to paint the station in its own colors and insignia. After an expenditure of a definite sum of money, the dealer agrees to

> "remove from the surface of the station which is to be painted all signs and insignia, and upon completion of the painting of said service station by Richfield, shall not place upon or over the painted surfaces any advertising sign, trademark, insignia, or any other matter without first procuring the consent and approval of Richfield."

[fol. 298] And Richfield retains the right to cause the removal of any signs placed in violation of this clause. The violation of any of the terms of the agreement makes the dealer liable to Richfield for the amount expended in painting.

It is quite evident that the aim of the sales contract is to so control the outlet for petroleum products that there is little, if any, room left for dispensing products other than those contracted for. Such arrangements were envisaged by me in the Standard case. And it was pointed out in that opinion that, while an agreement of this character would as effectively shut out access to other products, it still left a *possibility* of dealing with others should the operator be unable to secure his full supply from the contracting supplier.

The painting agreement is obviously intended to secure

an exclusive outlet under the guise of a painting agreement. Richfield is not in the business of painting. And the undertaking to paint at a certain cost in consideration of flying its colors under penalty of repayment when the agreement is breached, when tied to a sales contract which envisages 80 per cent of the needs of the operator, and to which the painting contract specifically refers,—could have but *one object*,—i.e., to shut out all competition. And, in reality, that was *the effect* of the arrangement.

Richfield's witnesses testified that the instructions to their representatives were "to persuade" the dealers working either under 337 or 3-C arrangements to confine themselves to Richfield products. [fol. 299] On the other hand, individual operators of these types of stations have testified to the fact that they were "coerced" into limiting themselves to Richfield products, that they were "called on the carpet", as it were, if other products were on their shelves.

It is not denied that Richfield maintained a policy against "split" pumps,—that is, pumps of other gasoline distributors. And it is quite evident that, in one form or another, the policy has been enforced, and that the moment gasoline of another concern was handled by any of the operators on these leases,—as one of their own witnesses put it,—Richfield "was no longer interested in the station", and terminated their relationship. Some of Richfield's own field representatives, called by the Government, testified that their instructions as to these stations were not to accept them and sell products to them, except upon a hundred per cent basis, i.e., that they deal only in Richfield products. Unauthorized signs were reported to Richfield. Orders were given to remove these competitive signs, when discovered. And, as to both types of stations, Richfield salesmen testified that their instructions were that only approved merchandise was to be handled, and that they understood the sales and painting agreements to call for that policy, and so informed the operators of "dealer" stations.

There is also evident that, despite the asserted independence of these operators so far as TBA products are concerned, in reality, there was coercion to induce them to [fol. 300] confine their dealings to the sponsored products. In truth, there is evidence that the policy of the Company was that if "any dealer" refused to interest himself in

Richfield sponsored TBA products, "then it's a new dealer",—i.e., the instructions were to cancel the arrangement, whatever it was.

The fact that non-sponsored TBA products were more profitable to the dealers, either because of better discounts or quicker fulfillment of warranties, shows Richfield's motivation in keeping this trade for itself by means of these agreements. It is true there were denials by witnesses for Richfield. But it is significant that the denials are mostly by persons who either made policy or carried it into effect, or who testified to instructions given or received on the subject.

On the other hand, the existence of the practice is testified to by men in charge of the stations or by men in the field who testified to *particular* experiences and incidents.

So the trier of fact must choose. And, when confronted by a series of instruments, the sole object of which is to tie these stations to contracts which, in effect, are *requirement* contracts, although not so denominated, the testimony of the men in the field who actually were told that they *could not* trade freely with outsiders fits into the scheme which the sales contracts coupled with the leases, and the sales contracts couple- with the painting agreements, evidently was intended to set up.

[fol. 301] We conclude, therefore, that the agreements relating to L-O, 337 and 3-C stations under which Richfield has operated in the six named States, are, and each of them is, in their creation and effect, in violation of Section 1 of the Sherman Anti-Trust Act and Section 3 of the Clayton Act. (42)

Judgment will, therefore, be for the plaintiff upon the following specific findings:

(1) The Richfield agreement as to each of the three types of stations relate to interstate commerce.

(2) They affect, and the transactions under them are, in the course of interstate commerce.

(3) The relation established by each of the three types of agreements, L-O, 337 and 3-C, is that of independent contractor, each of the operators being an independent business man, as that term is understood in anti-trust law.

(4) The 24-hours' termination clause has been used as

an instrumentality to force upon the lessees of L-O stations illegal restrictions as to the types of petroleum and sponsored TBA products to be handled on the premises.

(5) The 24-hours' termination clause is invalid, against public policy, and cannot, either under state or federal law, be enforced as a means of terminating the lease for even legal grounds by any notice by either side less than at least the minimum rental period for which rent is reserved, one month.

[fol. 302] (6) Richfield should be prohibited from using the 24-hours' termination clause at all to enforce its restrictive conditions as to the products sold on the premises.

(7) The agreements in the form of leases, sales contracts and/or painting contracts, and the oral agreements superimposed on them confine the operations of the stations to which they apply to dealing exclusively with Richfield petroleum products and automotive accessories handled or sponsored by Richfield.

(8) The agreements lock out dealers from sources of competitive products originating in interstate commerce.

(9) The agreements deny to dealers and, through them to the public, access to such competitive products.

(10) The agreements deny to manufacturers or suppliers of such products access to the outlets controlled by the independent business men who operate the three types of stations.

(11) The agreements affect a substantial number of outlets and a substantial amount of products, whether considered comparatively or not.

(12) The agreements constitute an unreasonable restraint of trade and commerce among the States, under Section 1 of the Sherman Anti-Trust Act. (15 U. S. C. A., Sec. 1)

(13) The agreements result in a substantial lessening of competition and tend to create a monopoly in a line of commerce in contravention of Section 3 of the Clayton Act. (15 U. S. C. A., Sec. 14)

[fol. 303] (14) The agreements are illegal in their effect and should be enjoined.

Dated this 2nd day of July, 1951.

Leon R. Yankwich, Judge.

[fol. 303a] Notes to Text

1. 15 U. S. C. A., Sec. 4.
2. 15 U. S. C. A., Sec. 25.
3. 15 U. S. C. A., Sec. 1.
4. 15 U. S. C. A., Sec. 14.
5. Santa Cruz Fruit Packing Company v. Labor Board, 1938, 303 U. S. 453, 463; United States v. Yellow Cab Company, 1947, 332 U. S. 218, 224-226; United States v. Paramount Pictures, 1948, 334 U. S. 131, 173; Carter Carburetor Corp. v. Federal Trade Commission, 1940, 8 Cir., 112 F(2) 722, 730; United States v. Standard Oil Company of California, 1948, D. C. Cal., 78 F. Supp. 850, 856, and cases cited in Notes 3 and 4.
6. See writer's opinion in United States v. Standard Oil Company of California, 1948, D. C. Cal., 78 F. Supp. 850, 856-864, and cases cited in Footnotes 4-33. And see, Fashion Originators' Guild v. Federal Trade Commission, 1940, 2 Cir., 114 F(2) 80, 84-85; Wickard v. Filburn, 1942, 317 U. S. 111, 118-128; Mandeville Farms, Inc. v. American Crystal Sugar Company, 1948, 334 U. S. 219, 229-234.
7. Standard Oil Company v. United States, 1911, 221 U. S. 1, 61; Indiana Farmer's Guide Company v. Prairie Farmer Publishing Company, 1934, 293 U. S. 278-279; United States v. Columbia Steel Company, 1948, 334 U. S. [fol. 304] 495, 525; United States v. Griffith, 1948, 334 U. S. 100, 105-107; William Golman Theatres, Inc. v. Loew's Inc., 1945, 3 Cir., 150 F(2) 738, 744.
8. International Salt Company v. United States, 1947, 332 U. S. 392, 398.
9. United States v. Griffith, 1948, 334 U. S. 100, 107.
10. Standard Oil Company v. Trade Commission, 1951, 340 U. S. 231, 248-249. See the writer's opinion in Balian Ice Cream Company v. Arden Farms Company, 1950, D. C. Cal., 94 Supp. 796, 801, and cases cited in Notes 18 and 19; and F. & H. Ice Cream Company v. Arden Farms Company, 1951, D. C. Cal., —— F. Supp. ——, especially Note 44, which gives a history of the development of the concept which led to the adoption of the anti-trust laws. And see, Shotkin v. General Electric Company, 1948, 10 Cir., 171 F(2) 236, 238; United States v. Underwriters' Assn., 1944,

322 U. S. 533, 553-554. And for a comprehensive review of the anti-trust laws, see, "Anti-Trust Law", The University of Illinois Law Forum, Vol. 1950, No. 4, pp. 491-672.

11. United States v. Standard Oil Company of California, 1948, D. C. Cal., 78 F. Supp. 850.

12. Standard Oil Company of California v. United States, 1949, 337 U. S. 293.

[fol. 305] 13. 15 U. S. C. A., Sec. 2. See, United States v. Griffith, 1948, 334 U. S. 100, 105-106; United States v. Paramount Pictures, 1948, 334 U. S. 131, 173-174.

14. 15 U. S. C. A., Sec. 1. See, Paramount Famous Corp. v. United States, 1930, 282 U. S. 30, 44; United States v. Masonite Corp., 1942, 316 U. S. 265, 275; Fashion Originators' Guild v. Federal Trade Commission, 1940, 2 Cir., 114 F(2) 80, Note 6.

15. 15 U. S. C. A., Sec. 14. See, Fashion Originators' Guild v. Federal Trade Commission, 1941, 312 U. S. 457, 468-469.

16. Standard Oil Company v. United States, 1949, 337 U. S. 293, 311-313.

17. Timkin Roller Bearing Co. v. United States, No. 353, Supreme Court, decided June 4, 1951.

18. 51 C. J. S., Landlord and Tenant, Secs. 1-3; 32 Am. Jur., Landlord and Tenant, Sec. 2.

19. United States v. Standard Oil Co. of California, 1948, D. C. Cal., 78 F. Supp. 850. Richfield contended at the trial that, as to certain leased stations, Standard had admitted that they were operated by "independent contractors". But the conclusion reached in the case was not based upon any admission. Standard contested all the way the validity of the tie-in contracts as to "every type" of station involved. And the conclusion that certain station operators were independent contractors was based upon the facts in [fol. 306] the case and not upon any admission by Standard. (See Finding 3, p. 875 of Opinion.)

20. Timkin Roller Bearing Company v. United States, No. 352, Supreme Court, decided June 4, 1951.

21. Kiefer-Stewart Company v. Seagram & Sons, Inc., 1951, 340 U. S. 211, 215; and see, Appalachian Coals, Inc. v. United States, 1933, 288 U. S. 344, 360-361; 376-377; United States v. Yellow Cab Co., 1947, 332 U. S. 218, 227.

22. Appalachian Coals, Inc. v. United States, supra, p. 360.

23. United States v. Masonite Corp., 1942, 316 U. S. 265, 280.

24. 51 C. J. S., Landlord and Tenant, Sec. 156; 32 Am. Jur., Landlord and Tenant, Secs. 66-70; Restatement, Property, Secs. 21, 45; California Civil Code, Sec. 761; and see, Smith v. Royal Insurance Company, Ltd., 1940, 9 Cir., 111 F(2) 667, 670-671.

25. Spiritwood Grain Co. v. Northern Pacific Ry. Co., 1950, 8 Cir., 179 F(2) 338, 341.

26. Phelan v. Anderson, 1897, 118 C. 504, 505-506; see, Psihozios v. Humber, 1947, 80 C. A. (2) 215, 220; Camp v. Matich, 1948, 87 C. A. (2) 660, 667.

27. Mitchell v. Davis, 1862, 20 C. 45, 47-48. This early case enunciated a rule, which has since become general. 32 Am. Jur., Landlord and Tenant, Sec. 9.

[fol. 307] 28. United States v. Standard Oil Company of California, 1948, D. C. Cal., 78 F. Supp. 850, at p. 854.

29. See cases cited in Notes 21 and 22. And see, Associated Press v. United States, 1945, 326 U. S. 1, 15.

30. Pacific Magnesium, Inc. v. Westover, 1948, D. C. Cal., 86 F. Supp. 644, and cases cited in Notes 4-6 therein; Pacific Magnesium Co. v. Westover, 1950, 9 Cir., 183 F(2) 584.

31. There is a statement in one of the cases to which they refer, Wm. Goldman Theatres, Inc. v. Loew's, Inc., 1945, 3 Cir., 150 F(2) 738, 743:

> "The restraint of trade contemplated by the statute means restraint of competition. United States v. Eastern Retail L. D. Ass'n., 234 U. S. 600, 34 S. Ct., 951, 58 L. Ed. 1490, L. R. A. 1915A, 788."

In the case to which reference is made in support of this statement, United States v. Eastern States Retail Lumber Dealers' Ass'n, 1914, 234 U. S. 600, 610, I find no language capable of being epitomized in this manner.

32. United States v. Eastern States Retail Lumber Dealers' Ass'n., supra.

33. United States v. Eastern States Retail Lumber Dealers' Ass'n, supra, at p. 601.

34. Wm. Goldman Theatres, Inc., v. Loew's, Inc., 1945, 3 Cir., 150 F(2) 738, 743.

[fol. 308] 35. Paramount Famous Lasky Corp. v. United States, 1930, 282 U. S. 30, 44.

36. Federal Trade Commission v. Curtis Company, 1923, 260 U. S. 568. The scope of the case is so limited in Carter Carburetor Corp. v. Federal Trade Commission, 1940, 8 Cir., 112 F. (2) 722, 736.

37. United States v. Masonite Corp., 1942, 316 U. S. 265, 280.

38. United States v. United States Steel Corp., 1920, 251 U. S. 417, 451.

39. United States v. United States Steel Corp., supra, p. 451.

40. United States v. Aluminum Company of America, 1945, 2 Cir., 148 F. (2) 416, 428.

41. United States v. Aluminum Company of America, supra, p. 428. And see, Standard Fashion Co. v. Magrane-Houston Co., 1922, 258 U. S. 346, 356; M. A. Adelman, "Effective Competition and the Anti-Trust Laws", 1948, 61 Harvard Law Review, p. 1289. It should be added that, in the solution of the problem which confronts us, we must bear in mind the type of legislation which we are interpreting. And cases holding operators of stations of this type *employees* under a state Workmen's Compensation Act (Continental Oil Co. v. Sirhall, 1950, — Colo —, 222 P. (2) [fol. 309] 612), or subjecting individual stations to state chain stores taxes (Standard Oil Company of Indiana v. State Board of Equalization, 1940, 110 Mont. 5, 99 P. (a) 229; Maxwell v. Shell Eastern Petroleum Products, Inc., 1937, 4 Cir., 90 F. (2) 39) do not help. For, in interpreting Workmen's Compensation or taxing statutes, Courts notoriously interpret their terms broadly, so as to achieve the beneficient social aims of the statutes. (See, Fox v. Standard Oil Co., 1935, 294 U. S. 87) Nor, for that matter, are we assisted by the recent decision of the District Court of Appeals of California (Mayes v. Richfield, 1951, 103 A. C. A. 23), which has held Richfield liable to third persons for injuries suffered on the premises of one of the L-O sta-

tions. The case was decided upon the theory, submitted to a jury, that, in view of the public purpose of the business conducted on the premises, the lessor cou' ` be held liable, if the leased premises *were not safe for the use intended*, and the condition existed at the time of the transfer.

This decision is in accord with the general view that, while a landlord of leased premises is not ordinarily liable for the injuries occurring thereon, he will be held liable where the property is leased for public purposes,—which the public is expected to enter for the transaction of business. (32 Am. Jur., Landlord and Tenant, Sec. 668) So the California Court, in applying this rule to one of the L-O stations, did not make a determination of the nature of the occupancy binding on us.

[fol. 310] On May 17, 1951, the Supreme Court of California granted a hearing in the case. This means that the Opinion loses all force as a precedent. For the Supreme Court may repudiate the doctrine announced in it. But even if it should stand, it does not go counter to views here expressed.

42. Richfield seems to find comfort in, and justification for, its position in an article, "Exclusive Dealer Devices of Petroleum Products", by Forrest Revere Black, 1940, 29 Georgetown Law Journal, pp. 438, et seq. The article was written before some of the most important decisions in the field of anti-trust law, including the decisions in the Standard case dealing with restrictive contracts, were made. More, a study of the article shows that what the writer sought to show was various devices resorted to by certain companies in order to *avoid* the consequence of regulatory statutes.

His introductory paragraph reads:

> "In any comprehensive history of government regulation of business in America, one chapter must be reserved to relate *the strange story of the ingenious strategy* of the major oil companies in marketing their products through the so-called 'Iowa Plan' and cognate devices, whereby the operator *simulates* the appearance of an independent dealer and the major producing companies thereby *acquire an exclusive outlet and at-*
> [fol. 311] *tempt to evade* the obligations of chain store

> taxes, social security legislation, Workmen's Compensation Laws, public liability insurance and labor troubles from attempts at unionization and collective bargaining." (p. 429) (Emphasis added)

Speaking more specifically of petroleum products, the article states:

> "The retail marketing of petroleum products has gone through several states. The dominant consideration on the part of producers has been a mad race to secure additional retail outlets and increased gallonage, and usually connected with this has been *an attempt to exclude the sale of competitor's products and to control the resale price.*" (p. 439-440) (Emphasis added)

While describing the various marketing methods, including what is known as the "Iowa Plan", —the general effect of which is to make the operator simulate the appearance of an independent dealer when he is, in reality, the manager of a chain store,—*the author does not give them his approval* as successful attempts at avoiding the effect of controls. But, even if such methods of evasion appealed to a writer as a lawyer, they certainly *do not deserve* the approval of a Court. In the field of anti-trust regulations, the aim of courts has always been to look behind devices which, under the appearance of innocuous arrangements,—such as exchange of information, listing of customers and the [fol. 312] like involved attempts to restrain and prevent competition and to enthrone monopoly. So here, our problem is to see what the *true relationship* is, regardless of what Richfield and the operators under its denomination *thought it to be.* And, as already appears, what to Richfield may seem *apparent* independence is demonstrably *real* independence, so far as the application of principles of anti-trust law are concerned. So, to apply a philosophical phrase, what to Richfield seems to be mere *appearance,* has, to us, all the indicial of *reality.*

[fol. 313] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

DECISION AND ORDER—Filed July 2, 1951

The above-entitled cause, heretofore argued, tried and submitted, is now decided as follows:

I

Upon the grounds stated in the Opinion filed herewith, Judgment will be for the Plaintiff as follows:

(1) That the defendant Richfield Oil Company has entered into contracts, consisting of written and oral agreements and understandings, which unreasonably restrain trade and commerce in petroleum products and automotive accessories, in violation of Section 1 of the Sherman Anti-Trust Act;

(2) That the defendant Richfield Oil Company has entered into contracts, consisting of written and oral agreements and understandings, the effect of which has been to substantially lessen and to restrain competition in petroleum [fol. 314] products and automotive accessories, in violation of Section 3 of the Clayton Anti-Trust Act;

(3) That the exclusive supply agreements and oral understandings between defendant and the independent service station operators involved herein (and including L-O, 337 and 3-C types) are in unreasonable restraint of, and substantially lessen competition in, interstate commerce in petroleum products and automotive accessories, and in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act;

(4) That defendant Richfield and its officers, directors, agents, representatives, and all persons and corporations acting, or claiming to act, on its behalf, be, and they are hereby perpetually enjoined from entering into, or enforcing any written or oral contract, agreement, or understanding, express or implied, with any independent service station operator (including L-O, 337 and 3-C types), or from inducing or compelling, or attempting to induce or compel,

by any means whatever, any independent service station operator (including L-O, 337 and 3-C types) to enter into any contract, agreement, or understanding of any kind whatsoever which provides:

(a) that the independent service station operator (including L-O, 337 and 3-C types) shall secure all of his requirements of petroleum products from defendant Richfield, or shall not handle the petroleum products of any other company;

(b) that the independent service station operator (including L-O, 337 and 3-C types) shall secure all his requirements of any one or more types of automotive accessories from or through defendant Richfield, or will [fol. 315] not handle accessories competitive with those distributed or sponsored by defendant;

(c) that the sale of any petroleum product or automotive accessory by defendant to any independent service station operator (including L-O, 337 and 3-C types) shall be conditioned on the exclusive handling by the independent service station operator of petroleum products or automotive accessories manufactured or sponsored by the defendant;

(5) In order not to deprive the defendant Richfield of the benefit of any appeal in the case, the permanent injunction to be issued shall be stayed until the expiration of six months after the Judgment shall have become final.

II

The Judgment will be based upon the following specific findings:

(1) The Richfield agreements as to each of the three types of stations relate to interstate commerce.

(2) The agreements affect, and the transactions under them are, in the course of interstate commerce.

(3) The relation established by each of the three types of agreements, L-O, 337 and 3-C, is that of independent contractor, each of the operators being an independent business man, as that term is understood in anti-trust law.

(4) The twenty-four hours' termination clause has been used as an instrumentality to force upon the lessees of

L-O stations illegal restrictions as to the types of petroleum and TBA sponsored products to be handled on the premises.

(5) The twenty-four hours' termination clause is invalid, [fol. 316] against public policy, and cannot, either under state or federal law, be enforced as a means of terminating the lease for even legal grounds by any notice by either side less than at least the minimum rental period for which rent is reserved,—one month.

(6) Richfield should be prohibited from using the twenty-four hours' termination clause at all to enforce its restrictive conditions as to the products sold on the premises.

(7) The agreements in the form of leases, sales contracts and/or painting contracts, and the oral agreements superimposed on them confine the operations of the stations to which they apply to dealing exclusively with Richfield petroleum products and automotive accessories handled or sponsored by Richfield.

(8) The agreements lock out dealers from sources of competitive products originating in interstate commerce.

(9) The agreements deny to dealers, and, through them to the public, access to such competitive products.

(10) The agreements deny to manufacturers or suppliers of such products access to the outlets controlled by the independent business men who operate the three types of stations.

(11) The agreements affect a substantial number of outlets and a substantial amount of products, whether considered comparatively or not.

(12) The agreements constitute an unreasonable restraint of trade and commerce among the States, under Section 1 of the Sherman Anti-Trust Act (15 U. S. C. A., Sec. 1.)

(13) The agreements result in a substantial lessening of competition and tend to create a monopoly in a line of commerce, in contravention of Section 3 of the Clayton Act. [fol. 317] (15 U. S. C. A., Sec. 14).

(14) The agreements are illegal in their effect and should be enjoined.

Such findings shall be in addition to such other findings as may be implicit in, and within the scope of, the decision hereby announced, and which may be necessary for the com-

plete determination of the issues made by the pleadings and the proceedings in the case, as decided by the Court.

Findings and Judgment will be prepared by counsel for the plaintiff under Local Rule 7, in accordance herewith and the views expressed in the Opinion.

Dated this 2nd day of July, 1951.

Leon R. Yankwich, Judge.

[fol. 318] IN UNITED STATES DISTRICT COURT

[Title omitted]

OBJECTIONS OF DEFENDANT TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL JUDGMENT PROPOSED BY PLAINTIFF—Filed August 2, 1951

Pursuant to Rule 7 of the Rules of the United States District Court for the Southern District of California, defendant, Richfield Oil Corporation, herein sets forth its objections to the Findings of Fact, Conclusions of Law, and Final Judgment herein as proposed by the plaintiff and filed with the Court herein on July 23, 1951.

I

OBJECTIONS TO PROPOSED FINDINGS OF FACT

A. Objections to Particular Findings of Fact as Proposed by Plaintiff.

1. Defendant objects to Finding 4 B containing the defi-
[fol. 319] nition of the term "independent operator" on the ground and for the reason that the same fails to distinguish between:

(a) 337 and 3-C service station dealers who are engaged in business in stations owned by them or leased by them from parties other than defendant and who constitute a legitimate market for and are the subject matter of competition between defendant and its competitors; and

(b) L.O. service station operators who have undertaken the operation of defendant's L.O. service sta-

tions under the terms and conditions of defendant's Form 542 written lease (Pl. ex. 1-G) and under the oral conditions imposed by defendant and which operators are not a legitimate market for defendant's competitors nor the subject matter of competition between defendant and defendant's competitors.

The use of the term "independent operator" throughout the proposed Findings of Fact and Conclusions of Law to refer indistinguishably to both the L.O. operators on the one hand and the 337 and 3-C dealers on the other will mislead and confuse the United States Supreme Court in its review of the evidence since the word "operator" was used by the witnesses at the trial with reference only to the L.O. operators and not to the dealers in the 337 and 3-C stations.

2. Defendant objects to that portion of Finding 4 D which states that "automotive accessories • • • are sold by Richfield or Richfield's authorized distributors to independent operators" on the ground and for the reason that said Finding is misleading in its failure to take into account the undisputed evidence that Richfield makes direct sales to only 36 service stations (Stip. of Facts, Def. ex. L; Pl. ex. 26-A, pp. 113-116, inc.) out of a total number of service stations as of December 31, 1950 in excess of 2,900. (Def. ex. M-4)

[fol. 320] 3. Defendant objects to that portion of Finding 4 E, to wit, "the sale and distribution of which are handled by or arranged for at service stations by Richfield" on the ground and for the reason that the language so quoted is unintelligible and contrary to the evidence.

4. Defendant objects to that portion of Finding 5 (p. 3, 11. 23-24) which states "Richfield has entered into three basic types of arrangements with independent operators relating to the operation of service stations in the Western area" on the ground and for the reason that the same is contrary to the uncontradicted evidence.

Richfield's "arrangements" with service station dealers of the 337 and 3-C stations do not relate "to the *operation* of service stations" but relate to the sale of petroleum products. On the other hand Richfield's "arrangements" with the L. O. operators do relate to the *operation* of the L.O. service stations.

5. Defendant objects to that portion of Finding 5 (p. 3, 11. 25-26) which states that "these three arrangements are based on various written and oral agreements and understandings" on the grounds and for the reasons:

(a) That the language "are based on" is uncertain and unintelligible, and

(b) That the reference to "oral agreements and understandings" is clearly erroneous and is unsupported by the evidence.

6. Defendant objects to that portion of Finding 5 (p. 4, 11. 4-5) which states that it is pursuant to the written lease that possession of an L.O. station is turned over to the operator.

This objection is made on the ground and for the reason that said Finding is contrary to the uncontradicted evidence that the L.O. operator is permitted the occupancy of Richfield's L.O. stations pursuant to both the written L.O. lease and the concurrent oral instructions concerning de- [fol. 321] tailed method and manner of operations and the reservation by Richfield of the right to control and supervise the same.

7. Defendant objects to that portion of Finding 5 (p. 4, 11. 9-10), to wit, "but it has at all times in legal effect been a lease as distinguished from a license".

This objection is made upon the ground and for the reason that the quoted language is not a Finding of Fact but is a Conclusion of Law.

8. Defendant objects to that portion of Finding 5 consisting of the sentence commencing in line 32 on page 4, on the grounds and for the reasons:

(a) That the proposed Finding is clearly erroneous in that it implies that a Sales Contract *and a Painting Agreement* are made with each 337 dealer. This is not supported by the evidence and is contrary to the Stipulation of Facts (Def. ex. L; Pl. ex. 26-A, pp. 28-29). For example, as of December 31, 1950, a Painting Agreement was made concurrently with the Sales Contract with only 853 out of a total of 1,361 stations of the 337 type; and

(b) That the proposed Finding fails to state, similarly to other portions of Finding 5, that the printed forms of Sales Contract and Painting Agreement were revised from time to time during the period of their use up to the present time.

9. Defendant objects to the last sentence of Finding 5 (p. 5, 11. 4-8, inc.) on the grounds and for the reasons that the same is clearly erroneous in the following respects:

(a) In so far as the proposed Finding pertains to the L.O. stations, it is the uncontradicted evidence that there is no oral agreement between Richfield and [fol. 322] the operator of any L.O. station; but that on the contrary each L.O. operator is *instructed* orally with respect to the various and detailed requirements imposed by Richfield as conditions upon the L.O. operator's occupancy of Richfield's station.

(b) In so far as the proposed Finding pertains to the 3-C and 337 dealer stations, there is no evidence whatsoever of any oral agreement between Richfield and any 337 or 3-C dealer of any such station.

10. Defendant objects to the last sentence of Finding 6 (p. 5, 11. 19-23) on the ground and for the reason that the same is contrary to the uncontradicted evidence to the effect that there is no oral contract or understanding between Richfield and the operator of any L.O. station, either for the purchase of petroleum products or for any of the other phases of the manner of the operation of the L.O. station; such matters being in the nature of oral conditions of the operator's continued occupancy of the station.

11. Defendant objects to that portion of Finding 9 (p. 6, 11. 19-20) to wit: "and contained the clauses usually found in leases".

Such objection is made on the ground and for the reason that if the same is a Finding of Fact, there is no evidence whatsoever in the record to support the same. There is no evidence in the record of what clauses are usually found in leases of real property.

12. Defendant objects to the second sentence of Finding 10 (p. 10, 11. 21-23) on the ground that the same is misleading and a distortion of the evidence.

The reason for such objection is that there is no evidence that the operator's investment is "generally" in amounts from $1,000 to $8,000, there being only one instance of an extraordinary nature where the operator purchased pe- [fol. 323] troleum products, TBA and movable tools to the extent of $8,000. (Tr. p. 1480) Furthermore, the Finding is unfair unless it states, in accordance with the uncontradicted evidence, that the bulk of any such "investment" consisted of merchandise.

13. Defendant objects to the portion of Finding 10 (p. 10, 11. 28-39) purporting to state that as a general practice the L. O. operator offers bonuses to his customers in the form of "Green Stamps" which are paid for by the operator. Only one witness out of twenty-four L. O. operators who testified at the trial referred to the use of Green Stamps and he discontinued the use of the same when requested so to do by Richfield. (Tr. p. 1044)

14. Defendant objects to that portion of Finding 10 appearing in lines 30 to 32 on page 10 on the ground and for the reason that the statement concerning responsibility is not a Finding of Fact but is a Conclusion of Law; and that even as a Conclusion of Law it would be erroneous and contrary to law.

15. Defendant objects to that portion of Finding 10 (commencing in line 32 of page 10 and continuing to line 3 of page 11) which states that the L. O. operator pays Richfield for sponsored automotive products "sold to him by Richfield either directly or through the Richfield TBA distributor".

The objection is made for the same reasons as stated above in objection #2.

16. Defendant objects to the last sentence of Finding 10 (p. 11, 11. 6-9) on the grounds and for the reasons:

(a) That the same is argumentative and not a Find ing of Fact; and

(b) That to the extent that it is a Finding of Fact, it is contrary to the uncontradicted evidence that the L. O. operators are uniformly informed and instructed, prior to their occupancy of the stations, that all good will is that of the defendant and that there is no intan-

[fol. 324] gible factor of good will which the operator may develop or sell to any successor operator.

17. Defendant objects to that portion of Finding 11 (p. 11, 11. 10-11) which refers to "or other compensation" on the ground that the same is contrary to the uncontradicted evidence.

Defendant's reason for this objection is that the evidence shows clearly Richfield's practice of compensating the L.O. operators for losses of margin during price wars. (See Def. ex. F and Tr., pp. 601; 1708-1710; 1893)

18. Defendant objects to Finding 12 to the extent that the same refers to oral agreements and understandings, upon the grounds and for the reasons stated in objection #10.

19. Defendant objects to the first sentence of Finding 12 on the following grounds and for the following reasons:

(a) The reference to the "illegal provisions" is a Conclusion of Law and not a Finding of Fact; and

(b) The Finding that the 24-hour cancellation clause was for the purpose of enforcing Richfield's control of the petroleum products and automotive accessories handled at the station is a part truth only, it being the uncontradicted evidence that the 24-hour clause was used for the purpose of controlling a multitude of phases of the operation and maintenance of the L. O. stations, only one limited phase of which was the type of products sold therein. (Tr. 1711-12; 1935; 1944)

20. Defendant objects to the second and the third sentences of Finding 12 (p. 11, 11. 22-27) on the ground that the same are clearly erroneous.

Defendant's objection is for the reason that there is no testimony whatsoever in the record to support such Find- [fol. 325] ings, and such Findings are contrary to the uncontradicted evidence.

21. Defendant objects to that portion of Finding 12 (p. 11, 11. 31-32) that "such 24-hour cancellation provision was in fact resorted to and exerted in enforcing the oral agreement and understanding mentioned in paragraphs 5 and 6" on the ground and for the reason that the same is

clearly erroneous and contrary to the evidence in the following respects:

(a) There is no oral agreement between Richfield and the L. O. operator;

(b) The concellation provision was resorted to not for the purpose of "*enforcing*" the oral conditions of the L. O. tenancy but for the purpose of *terminating* the same; and

(c) The cancellation provisions were resorted to not only because of violation of instructions concerning the handling of Richfield's petroleum products or approved automotive accessories, but for violation of various other conditions of the L. O. operator's occupancy.

22. Defendant objects to the penultimate sentence of Finding 12 unless the reference therein made to automotive accessories and other equipment be expressly limited to *unapproved* automotive accessories or *unapproved* service station tools and equipment.

This objection is made upon the ground and for the reason that the proposed Finding is contrary to the evidence and ambiguous.

23. Defendant objects to that portion of Finding 13 (p. 12, l. 18) to wit: "and usually at substantially the same specified rental" on the ground and for the reason that there is no testimony or evidence to support such Finding.

24. Defendant objects to the last sentence of Finding 13 (p. 12, ll. 26-30) on the ground that the same is clearly erroneous.

[fol. 326] Defendant's reason for such objection is that such proposed Finding is not supported by any evidence whatsoever and is contrary to the plain provisions of the Sales Contract, and is contrary to the evidence.

25. Defendant objects to the first sentence of Finding 14 beginning on line 31 on page 12 and extending through line 7 on page 13, on the grounds that the same is contrary to the uncontradicted evidence as to the use of said agreements as set forth in the Stipulation re introduction of certain evidence (Def. ex. A, l. 6, p. 4 to l. 11, p. 5).

Defendant's reason for such objection is that such portion of Finding 14 is misleading and gives the erroneous impression that defendant used a form of contract calling for the sale of the dealer's "requirements" at all times from 1945 to the present time; whereas, in truth and in fact, defendant Richfield used such type of contract only until August, 1948, at which time it discontinued such use on the advice of its legal counsel promptly following the decision by Judge Yankwich in the case of *United States* v. *Standard Oil Company of California*, and in order to comply with the principle of law there announced. It is likewise provided in the Stipulation of Facts (Def. ex. A) that Richfield immediately negotiated for the modification of all of such "requirements" contracts then in effect and has succeeded in amending all of them with the exception of four.

26. Defendant objects to the last sentence of Finding 14 (p. 13, 11. 8-9) on the grounds that the same is misleading and a distortion of the evidence in so far as it states as to term: "which may be as long as twenty years in duration".

The reason for such objection is that there is only one instance of an extraordinary nature where the term of such 3-C transaction extended for as long as twenty years, (Tr. 1089—Colmery transaction) and the twenty year duration [fol. 327] in that transaction was shown to have been required not by Richfield but by the 3-C dealer, Mr. Colmery.

27. Defendant objects to Finding 16 to the extent that it fails to state (in a manner comparable to the statement in Finding 17) that the form of Sublease represented by plaintiff's exhibit 4-A was used by Richfield only during the period from November 1945 to August of 1948.

This objection is made upon the ground and for the reason that, without such qualification, Finding 16 is ambiguous and misleading.

28. Defendant objects to Findings 16 and 17 on the grounds that said Findings refer to the change in paragraph 12 in the form of Sublease represented by exhibits 4-A and 4-D, respectively, but make no reference to the changes in paragraph 3 of such respective forms of Sublease. This objection is made upon the ground and for the reason that, without reference to such additional change in said form of Sublease, the Finding is misleading as to

the purpose intended to be accomplished by defendant by the alteration of the form in August of 1948.

29. Defendant objects to that portion of Finding 19 contained in the sentence starting in line 9, on page 17, on the following grounds:

(a) The use of the word "required" is a distortion of the testimony and gives the implication that Richfield has imposed some "compulsion on the 3-C dealer, which such implication is not supported by any evidence whatsoever.

(b) The statement that the quantities are "determined by Richfield" is a distortion of the evidence and bears the inference and implication that the quantities are fixed by Richfield alone rather than being the sub- [fol. 328] ject of negotiation by Richfield and the 3-C dealer, which latter fact is the only one which is supported by the evidence.

(c) The statement that the quantities are "usually fixed by Richfield at 80% of the anticipated requirements of the independent operator" is contrary to the evidence. The uncontradicted evidence is that Richfield's salesmen were instructed that in the use of said form they were to negotiate with the 3-C dealer for the quantity which the dealer desired to buy with the qualification that the dealer was not to be permitted to obligate himself to buy a quantity in excess of 85% (subsequently reduced to 75% in early part of 1950) (Tr. pp. 1844; 1873) of the dealer's past known purchases of such products.

Defendant's reason for the foregoing objections is that the portion of Finding 19 above referred to is not supported by the evidence and is contrary thereto.

30. Defendant objects to the last sentence of Finding 19 (p. 17, 11, 13-16) on the grounds and for the reasons that the same is not supported by any evidence whatsoever and is contrary to all of the evidence concerning both the purpose and effect of the quantity provision in exhibit 4-C.

31. Defendant objects to all of Finding 20 on the ground and for the reason that the same is clearly erroneous and that there is no testimony or evidence whatsoever of any

oral agreement or understanding between Richfield and any 3-C dealer relating to the purchase of automotive accessories or to any other matter; and that such Finding is contrary to the evidence.

32. Defendant objects to those portions of Finding 21 wherein reference is made to oral agreements and understandings with 337 dealers on the ground and for the reason that there is no evidence whatsoever of any oral agree-[fol. 329] ment or understanding between Richfield and any 337 dealer.

33. Defendant objects to that portion of Finding 23 which states that no substantial change was made in the written form of Sales Contract (Pl. ex. 5) until August 1948. The objection is made on the ground and for the reason that this is contrary to the uncontradicted evidence and the Stipulation of Facts (Def. ex. A), which shows that commencing in June of 1938 a form of Sales Contract (Pl. ex. 5-B) was put into effect, which form eliminated the one year minimum term contained in plaintiff's exhibit 5 which is referred to in Finding 22.

34. Defendant objects to that portion of Finding 24 commencing with the words "and the minimum requirement provisions", in line 16 of page 20, on the following grounds and for the following reasons:

(a) The statement that the minimum requirement provisions "were fixed and determined by Richfield" is uncertain, ambiguous and unintelligible and contrary to the evidence.

(b) The statement that the practical and intended purpose and effect of said provisions has been to require the 337 dealer to secure his entire requirements of petroleum products from defendant is not supported by any evidence whatsoever and is contrary to clear and uncontradicted evidence.

35. Defendant objects to the first sentence of Finding 25 to the extent that the same states that the Sales Contract was "usually accompanied" by a Painting Agreement. The objection is on the ground and for the reason that said statement is contrary to the Stipulation of Facts (Def. ex. L and Pl. ex. 26-A, pp. 28-29). (See objection # 8.)

36. Defendant objects to the second sentence of Finding [fol. 330] 25 on the ground and for the reason that the paraphase and interpretation of the Painting Agreements are contrary to the language and clear meaning of such Painting Agreements. Said objection is made for the reason that there is nothing in any of the forms of Painting Agreement which provides for the payment of painting costs by the service station dealer "in the event the Sales Contract was cancelled for any reason" nor is there any provision giving defendant the right to control the placing or removal of advertising signs, etc. "on the premises" of the 337 station; and for the additional reason that the proposed Finding is a deliberate distortion of the evidence and of the terms of the Painting Agreement.

37. Defendant objects to all references in Finding 26 to any oral agreements or understandings on the ground and for the reason that there is no evidence of any oral agreement or understanding of any nature between Richfield and any one or more of the 337 dealers who operate any of the 1,361 stations of that type.

38. Defendant objects to those portions of Finding 26 which state that the purpose or intended effect of the Painting Agreement was to secure "an exclusive Richfield outlet" or to compel the dealer to purchase his requirements of petroleum products from or through Richfield or to shut out competition.

The objection is on the ground and for the reason that there is no evidence whatsoever of any such purpose or intent; but on the contrary the uncontradicted evidence (Tr. 1759 et seq.) is:

(a) That defendant's competitors offer to paint the stations of the potential customers, i.e., the 337 dealers, without cost and that defendant must do the same in order to meet the competition of such competitors.

(b) That the 337 dealers demand the painting of their station without cost to them as a condition to [fol. 331] purchasing any petroleum products from defendant; and

(c) That under such circumstances, defendant is willing to paint the service station of the 337 dealer without charge and without the right to collect for the

cost of such painting, excepting in the limited circumstances specified in the Painting Agreement.

39. Defendant objects to those portions of Finding 26 which state that the Painting Agreements had the effects of compelling the 337 dealer to purchase his requirements of petroleum products and automotive accessories from or through defendant and of shutting out all competition for such business of the 337 dealer. The objection is made on the grounds and for the reasons that there is no evidence whatsoever to support such Finding and that the evidence is clearly contrary thereto, to wit:

(a) That 75% of all 337 dealers handle, display and advertise non-Richfield lubricating oils and greases and also handle, display and advertise automotive accessories not approved or sponsored by defendant (Tr. 1897); and

(b) That although the 337 dealers have not handled non-Richfield gasoline during the time they handled Richfield gasoline, nevertheless this fact resulted from the desire of the 337 dealers; and further that 337 dealers very often discontinued all purchases of Richfield gasoline from defendant prior to the expiration of their 337 Sales Contract (Tr. 1773); and

(c) That during the period from January 1, 1946 to December 31, 1950, out of a total of 514 of such accounts lost, 407 (or approximately 80% thereof) were lost prior to the expiration of the Sales Contract and approximately 75% of such 407 accounts so lost in such manner had accompanying Painting Agreements. [fol. 332] (Def. ex. X) Such testimony can bear no inference other than the fact that the existence of the Painting Agreement did not have the effects asserted in the proposed Finding.

40. Defendant objects to that portion of Finding 27 to the effect that there are any oral contracts or agreements with any of the service station dealers or operators referred to in the Findings of Fact upon the grounds and for the reasons stated in objections ## 10 and 37.

41. Defendant objects to that portion of Finding 27 which states that the operator of any L. O. station is an "inde-

pendent businessman". This objection is made upon the grounds and for the reasons:

(a) That the same is not a Finding of Fact but a Conclusion of Law;

(b) That to the extent that it is a Finding of Fact, it is not supported by the evidence and is contrary to the evidence; and

(c) Upon the further grounds and reasons stated in support of defendant's objection #1 above.

42. Defendant objects to Finding 28 in its entirety (excepting to the extent that it refers to defendant's L. O. stations) on the ground and for the reason that it is clearly erroneous, that it is not supported by the evidence and that it demonstrates a deliberate and calculated purpose to distort the evidence and any inference that may be drawn from it. Defendant's reasons for such objection are:

(a) That the Finding is designed to give the erroneous impression that any policy or practice of defendant which occurred in 1938 has continued without change or interruption up to the date of the trial; whereas on the contrary, the only evidence in support [fol. 333] of the Finding is confined to plaintiff's exhibit 9, which is a letter dated June 16, 1938, and testimony of isolated instances occurring thereafter and not later than 1941, with the sole exception that during the period from 1945 until the decision by Judge Yankwich in *United States* v. *Standard Oil Company of California* in the summer of 1948, the defendant's Sales Contract with the 3-C dealers provided for the sale of the dealer's entire requirements of petroleum products; and

(b) That subsequent to 1941, although defendant did not *solicit* the sale of gasoline to the less than 2% of independent service stations which were operated on a "split pump" basis, there is no evidence that Richfield ever refused the request of any of such "split pump" dealers to sell gasoline to him, nor that Richfield ever discontinued the sale of gasoline to any dealer on the ground or for the reason that any such dealer desired to operate a "split pump" station or

commence such operation; nor is there any evidence that Richfield terminated any Sales Contract excepting only after the particular dealer involved discontinued entirely the purchase of Richfield gasoline. The undisputed testimony is that Richfield did not engage in any of such practices at any time after 1941 (Tr. 1780, et seq.; 1848, et seq.); and

(c) On all the grounds and for all the reasons designated in support of defendant's objections ##37 and 39.

43. Defendant objects to Finding 29 in so far as it relates to the 1,361 stations of the 337 type and to the 261 stations [fol. 334] of the 3-C type on the ground and for the reason that in those respects the Finding is clearly erroneous and there is no evidence whatsoever in support thereof.

44. Defendant objects to Finding 30 in so far as it refers to oral agreements on the grounds and for the reasons specified in defendant's objections ##10, 31 and 37.

45. Defendant objects to Finding 32 on the following grounds and for the following reasons:

(a) The reference to exhibits 4-A and 4-B in connection with the numbers of 3-C operator leases and 3-C Sales Contracts in existence as of December 31, 1950, is erroneous and contrary to the Stipulation of Facts, defendant's exhibit A. The total number of 261 3-C service stations are all on forms covered by plaintiff's exhibits 4-D and 4-C as revised in the fall of 1948, with the sole exception of four 3-C dealers who would not revise their former contracts.

(b) The reference to exhibit 5-B in connection with the 1,361 Sales Contracts on Form 337 in existence as of December 31, 1950, is erroneous and is contrary to the Stipulation of Facts, defendant's exhibit A, which shows that Sales Contracts on Form 5-B were amended by the form represented by plaintiff's exhibit 5-I.

(c) The reference to exhibit 5-C in connection with the 1,094 Painting Agreements in effect as of December 31, 1950, is erroneous and is not supported by any evidence. Exhibit 5-C has not been in use since it was

revised and reprinted in August of 1948. (See Stipulation of Facts, Def. ex. A.)

46. Defendant objects to Finding 33 in its entirety upon [fol. 335] the grounds and for the reasons stated in defendant's objections ## 10, 31 and 37.

47. Defendant objects to Finding 34 in the following respects:

(a) Objects to all references to oral agreements upon the grounds and for the reasons stated in defendant's objections ## 10, 31 and 37.

(b) Objects to the figure of $43,174,243 as a characterization of "business done between Richfield and the independent service station operators" upon the ground and for the reason that said figure includes the total volume of automotive accessories described in Finding 37, only a minute fraction of which was sold by Richfield to service station dealers.

48. Defendant objects to the second sentence of Finding 36 on the ground and for the reason that the figures therein do not relate to automotive accessories distributed to the service stations therein referred to. (See Def. ex. L, Table XII, and Pl. ex. 26-A, p. 118.)

49. Defendant objects to the second sentence of Finding 37 upon the grounds and for the reasons specified in defendant's objection # 2.

50. Defendant objects to that portion of Finding 37 appearing in lines 21 to 32 on page 26 upon the ground and for the reason specified in defendant's objection # 48.

51. Defendant objects to Findings 31, 32, 33, 34, 35, 36 and 37 upon the ground that the use of comparative statistics in the showing of the increase of numbers of service stations and the increase in volume of sales between December 31, 1938, and December 31, 1950, is a distortion and unfair unless there is concurrently made a Finding of the increase in the number of service stations generally and the [fol. 336] increase in volume of sales of petroleum products and automotive accessories throughout the industry, all as shown by the evidence, and particularly by defendant's exhibits M-4 to M-13, respectively.

52. Defendant objects to that portion of Finding 39 which refers to oral agreements on the ground and for the reasons stated in defendant's objections ## 10, 31 and 37.

53. Defendant objects to that portion of Finding 39 which states that the transactions "prevent the dealer from dealing with competitive suppliers". The objection is made on the ground and for the reason that there is no evidence in support of such Finding in so far as the same pertains to the 3-C or 337 dealers.

54. Defendant objects to that portion of the last sentence of Finding 43 to the effect that the TBA distributor is "required to report instances in which said operators are selling or acquiring automotive accessories from or through sources other than Richfield" upon the ground and for the reason that there is no evidence whatsoever to support such Finding.

55. Defendant objects to those portions of Finding 45 which refer to oral agreements with the operators of service stations, which objection is made upon the grounds and for the reasons specified in defendant's objections ##10, 31 and 37.

56. Defendant objects to the last sentence of Finding 45 in so far as the same relates to any 337 or 3-C stations. Said objection is made upon the ground and for the reason that there is no evidence to support any such Finding, except in so far as the same relates to L.O. stations, and that said Finding is contrary to the clear and uncontradicted evidence.

57. Defendant objects to Finding 46 in its entirety

(a) Upon the grounds and for the reasons specified in defendant's objections ## 10, 31 and 37;

(b) Upon the ground and for the reason specified in [fol. 337] defendant's objection #56;

(c) Upon the ground that in so far as the L.O. stations are concerned they do not constitute a legitimate market for the products of Richfield's competitors.

58. Defendant objects to Finding 47 in its entirety upon the grounds and for the reasons specified in defendant's objection #57.

59. Defendant objects to Finding 48 in its entirety upon the grounds and for the reasons specified in defendant's objection #57.

[fol. 338] B. Objections Based Upon *Failure to Make* the Following *Findings of Material Facts Re the L.O. Stations* in Accordance with the Uncontradicted Evidence, Which Objections are Made Upon the Ground and for the Reason that they are Material to the Issues Raised by the Pleadings.

1. Re Richfield's business purpose in the acquisition and maintenance of the L.O. stations:

(a) Richfield's business purpose and intent in the acquisition and maintenance of L.O. stations has been to provide a stable outlet for the petroleum products produced by it (Tr. 1687);

(b) The intense competition in Richfield's marketing area for the business of independent service station dealers who own or lease their respective service stations is such that, notwithstanding Richfield's constant solicitation of such business, Richfield cannot depend thereon as a stable outlet for the sale of its petroleum products (Tr. 1687-1689);

(c) Richfield's need for service station outlets has greatly increased since the termination of World War II due to the following factors (Tr. 1689-1692):

(i) During World War II Richfield's refinery capacity for the manufacture of motor gasoline was increased 32.5% (or the equivalent of 10,705 barrels of motor gasoline per day, or approximately 13,500,000 gallons per month) as the result of the installation by Richfield at the request of the United States Government of additional refinery facilities at an expenditure of approximately $20,000,000 (Def. [fol. 339] ex. AC, AE, AE-1, AE-2, AE-3 and AF);

(ii) Immediately following V-J Day in the fall of 1945, the United States Government reduced its purchases of gasoline from Richfield from 17,000 barrels per day to 2,000 to 3,000 barrels per day (Tr. 2039);

(iii) Richfield discovered new oil fields (Tr. 1691);

(iv) There was a substantial increase in the demand for petroleum products due to vast increase in population on Pacific Coast (Tr. 1691 and Def. ex. M-13);

(d) To satisfy such need for outlets for its production of petroleum products, Richfield during the period following 1946 acquired properties by lease and purchase, 90% of which were unimproved and vacant sites; and Richfield constructed service stations thereon. As of December 31, 1950, Richfield's investment in service station properties and improvements thereon was approximately $19,500,000 (Tr. 1692-1697, Def. ex. AB);

(e) Notwithstanding such acquisition and investment, the number of Richfield's L.O. service stations has not increased during the past decade; and Richfield had fewer L.O. service stations as of December 31, 1950, than it had as of December 31, 1941 (Def. ex. M-4, Tr. 1697);

(f) As of December 31, 1950, 1,092 L.O. stations, representing in excess of 81% of the total number of 1,343 L.O. stations owned or leased by Richfield, were self-created stations, i.e., stations built by Richfield or [fol. 340] by the property owners under agreement with Richfield on sites which had never theretofore been used or equipped as service stations handling any petroleum products.

2. Re Richfield's relationship with L.O. operators.

(a) In selecting operators for its L.O. stations, Richfield made it a practice to investigate their character, reputation, family background and like qualities, and has interviewed various applicants and has required the use by them of application forms to secure such information (Tr. 1698-1699, Stip. of Facts, Def. ex. A);

(b) Few, if any, of the L.O. operators had been independent dealers established in business in service stations owned or leased by them prior to becoming operators in Richfield's L.O. stations (Tr. 1698-1699);

(c) Prior to installation in one of Richfield's L.O.

stations, the prospective operator is thoroughly instructed and informed of Richfield's requirements and practices concerning the following matters (Tr. 1920-1935):

(i) Richfield's requirement that operator and his helpers wear approved Richfield uniforms;

(ii) Richfield's requirement of a minimum crew of employees and helpers;

(iii) Richfield's requirement as to the hours the station is to remain open;

(iv) Richfield's requirement of the personal cleanliness and appearance of operator and his helpers; [fol. 341] (v) Richfield's requirement of use of specified pump island procedure and manner of dealing with public;

(vi) Richfield's requirement of the handling of Richfield products exclusively;

(vii) Richfield's requirement of the securing of approved TBA from Richfield's local distributor if the latter is able to supply the operator;

(viii) Richfield's instructions as to how to order petroleum products;

(ix) Richfield's instructions concerning the procedure in use of Richfield's credit cards;

(x) Richfield's instructions against display of unapproved or competitive signs;

(xi) Richfield's instructions to operator to attend training meetings;

(xii) Richfield's practices whereby Richfield's merchandiser will from time to time, not less frequently than once every sixty days, inspect station and operator's maintenance and operating methods and instruct him on any matters determined to be corrected;

(xiii) Richfield's requirement that incoming operator acquire from outgoing operator Richfield petroleum products, TBA items approved by Richfield and service station tools approved by Richfield and that incoming operator not acquire other items from outgoing operator.

(xiv) Richfield's practice and obligation in assisting operator in disposing of such approved items of petroleum products, TBA and equipment on term-
[fol. 342] ination of operator's tenure;

(xv) Richfield's practice and instructions that operator does not acquire or develop any good will and shall not be permitted to charge for any intangible value to his successor on termination of his tenure;

(xvi) The existence of the explanation of 24-hour termination clause in the Form 542 lease which is available to either party, and Richfield's reason for requiring the same as protection of its property, investment and merchandising program.

(d) Upon installation of L.O. operator, Richfield's merchandiser instructs him for a minimum of five days; and thereafter the merchandiser calls on the operator from two days a week to once a month, using an itemized form as a training guide; and every sixty days the merchandiser checks in detail the compliance with instructions on a printed form (Tr. 1937-1939, Def. exs. C and V);

(e) L. O. operators are at times promoted from one station to another or to the Company's Marketing Department (Tr. 99, 1364; 1937);

(f) It has been Richfield's practice that the following circumstances have warranted Richfield's terminating the tenure of an L.O. operator, i.e., insufficient crew, failure to maintain sufficient inventory, operation of a dirty station, failure to maintain sufficient operating hours, absentee operation or failure to carry Richfield products exclusively (Tr. 1943-1944);

(g) Richfield extends financial assistance to L.O.
[fol. 343] operators as follows:

(i) Richfield subleases to L.O. operators fully equipped service stations (excepting only small tools and lubricating equipment) at a rental substantially less than the fair rental value thereof (Tr. 1704-1705, 1981-1982). As to stations leased rather than owned by Richfield, Richfield pays rentals to the property owners substantially in excess of those

collected from the L.O. operators and in this respect absorbs a rental expense of approximately one-third of the total rentals paid (Def. ex. AA);

(ii) Richfield has maintained a practice of reducing the L.O. operator's rentals whenever the operator has experienced difficulty in developing a satisfactory volume of business (Tr. 1699-1701);

(iii) Richfield subsidizes L.O. operators during "price wars" to the extent of their full margin of profit if they reduce prices to meet competition (Tr. 1708-1710; 1817; Def. ex. F);

(iv) Richfield has made a practice of loaning money to L.O. operators so that they can carry adequate inventories of petroleum products (Tr. 1703 et seq.);

3. In light of the facts enumerated in proposed Findings 1 and 2 above, the L.O. operators are not independent businessmen, (whether or not they be determined to be independent contractors); and the trade and custom of the L.O. operators is Richfield's trade and custom; and the L.O. operators do not constitute a legitimate market for Richfield's competitors.

[fol. 344] 4. Restraints imposed by Richfield upon the petroleum products and automotive accessories handled by the L.O. operators in Richfield's L.O. stations are not unreasonable restraints of trade because of the following facts which are found to exist:

(a) Richfield does not have a position of dominating power in the petroleum products industry or in the automotive accessories industry in the Western area (Def. exs. M-4 to M-12, inc., and Def. ex. Z);

(b) The Form 542 sublease used with each L.O. operator is not unreasonable in duration, being terminable by either party thereto on 24-hours' notice (Pl. exs. 1-B, 1-D, 1-E and I-G);

(c) The public interest has not been harmed or adversely affected (Def. ex. M-13);

(d) The effect of Richfield's contracts with its L.O. operators has not been to unreasonably restrict the

opportunity of Richfield's competitors to market their products;

(e) In excess of 81% of the L.O. stations were self-created by Richfield (Def. ex. W);

(f) Richfield's actions with respect to the acquisition and maintenance of L.O. stations and the leasing thereof to L.O. operators in the manner and upon the terms described in the foregoing Findings sprang from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors.

5. For the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with its L.O. operators do not substantially lessen competition or tend to create a monopoly in any line of commerce;

[fol. 345] 6. If the business of the L. O. operators be considered a legitimate market for Richfield's competitors, nevertheless the business of said L. O. stations is not a substantial share of the line of commerce affected (Def. exs. M-4 to M-12, inc. and Def. ex. Z).

[fol. 346] C. Objections based upon *failure to make* the following *findings of material facts re the 337 and 3-C dealer stations* in accordance with the uncontradicted evidence, which objections are made upon the ground and for the reason that they are material to the issues raised by the pleadings.

1. Richfield had in effect as of February 28, 1951, a total of 1,640 Sales Contracts with 337 and 3-C dealers and the following Table segregates said contracts into four classes on the basis of the ratio which the quantity of gasoline that the dealer obligated himself to purchase under his Sales Contract bears to such dealer's average monthly purchases for the year preceding the date of the contracts. Column (1) specifies the ratio, column (2) specifies the number of contracts falling in each ratio group and column (3) specifies the percentage of total contracts in each ratio group.

(1) Contract groups	(2) Number of sales contracts	(3) Percent each group bears to total number of sales contracts
Group A—Less than 75%	408	25%
Group B—75% to 79%, inc.	458	28%
Group C—80% to 89%, inc.	560	34%
Group D—90% and over	214	13%

(def. ex. Y)

2. During each year from 1938 to and including 1950, Richfield had in effect a number of Sales Contracts with 337 dealers; some of which were not accompanied by a Painting Agreement (the numbers of which appear in column # 1 below); some of which were accompained by a Painting Agreement executed concurrently with the Sales Contract (the numbers of which appear in column # 2 below); and some of which were accompanied by a Painting Agreement executed subsequent to the execution of the Sales Contract (the numbers of which appear in column # 3 below).

(See Table on following page.)

[fol. 347] December 31st of	(1)	(2)	(3)
1938	109	349	98
1939	119	380	107
1940	121	385	109
1941	139	444	125
1942	93	298	84
1943	119	379	107
1944	123	394	112
1945	173	552	156
1946	205	656	185
1947	208	665	188
1948	223	712	201
1949	236	755	213
1950	267	853	241

(Def. ex. L and Pl. ex. 26-A, pp. 28-29)

3. During the period from January 1, 1946 to December 31, 1950, defendant lost the business of 514 dealers who were purchasing petroleum products from defendant under the provisions of Form 337 Sales Contracts. Out of said 514 accounts so lost 407 (or approximately 80% thereof) were lost prior to the expiration of the Sales Contract; of the 407 lost prior to the expiration of the Sales Contract 303 had Painting Agreements in effect and 104 had no Painting Agreements in effect; of the 107 of said accounts which were lost at the expiration of the contract 81 had Painting Agreements in effect and 26 did not have Painting Agreements in effect at the time of loss. (Def. ex. X)

4. Richfield's contracts and agreements with the 337 dealers and the 3-C dealers are not unreasonable restraints of trade because of the following facts which are found to exist:

(a) The contracts provide for the purchase by the respective dealers of specified quantities of petroleum products and do not prevent or preclude any of such [fol. 348] dealers from purchasing additional quantities of the same products from any and all competitors of defendant.

(b) Not less than 75% of all of the 337 and 3-C dealers handle, openly advertise and display, and sell non-Richfield petroleum products and non-approved automotive accessories.

(c) Richfield does not have a position of dominating power in the petroleum products industry or in the automotive accessories industry in the Western area. (Def. exs. M-4 to M-12, incl. and Def. ex. Z)

(d) The 337 Sales Contract is not unreasonable in duration, being terminable by either party thereto on thirty days' written notice. (Pl. exs. 5-D and 5-G)

(e) The public interest has not been harmed or adversely affected. (Def. ex. M-13)

(f) The effect of Richfield's contracts with the 337 dealers has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products.

(g) The effect of Richfield's contracts with the 3-C dealers has not been to unreasonably restrict the op-

portunity of Richfield's competitors to market their products.

(h) Richfield's actions with respect to the 337 dealers and the 3-C dealers sprang from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors.

5. For the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with the 337 dealers [fol. 349] do not substantially lessen competition or tend to create a monopoly in any line of commerce.

6. For the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with the 3-C dealers do not substantially lessen competition or tend to create a monopoly in any line of commerce.

7. The number of contracts and the volume of business done by Richfield with 337 dealers is not a substantial share of the line of commerce affected. (Def. exs. M-4 to M-12, incl. and Def. ex Z)

8. The number of contracts and the volume of business done by Richfield with 3-C dealers is not a substantial share of the line of commerce affected.

[fol. 350] II

Objections to Proposed Conclusions of Law

1. Defendant objects to Conclusions 1 to 4, inclusive, and 6 to 11, inclusive, upon the ground and for the reason that the evidence does not support any Finding or Conclusion concerning or based upon the existence of any oral contracts, agreements or understandings.

2. Defendant objects to Conclusion 5 upon the ground and for the reasons:

(a) That the jurisdiction of this Court is based upon the Acts of Congress known as the Sherman and Clayton Anti-Trust Laws (see paragraph 1 of the complaint herein); and that any determination concerning the validity under state law or so-called federal law (other than said Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause

contained in the L.O. lease form is beyond the jurisdiction or power of this Court;

(b) That there is and can be no issue in this cause concerning the validity under state law or so-called federal law (other than the Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause contained in the L.O. lease forms;

(c) That any reference therein contained to the validity of the 24-hour termination clause under either state or federal law (other than the Sherman and Clayton Anti-Trust Laws) is erroneous and contrary to law.

3. Defendant objects to the second sentence of Conclusion 8 upon the ground and for the reason that the same is not a Conclusion of Law but rather is a Finding of Fact; and [fol. 351] upon the further ground and for the reason that as a Finding of Fact it is clearly erroneous and not supported by any evidence, excepting in so far as it relates to the L.O. stations.

[fol. 352]

III

Objections to Proposed Final Judgment

1. Defendant objects to the definitions of "independent dealer" and "automotive accessories" upon the grounds and for the reasons stated in defendant's objections to Findings of Fact hereinabove, ##A-1 and A-2.

2. Defendant objects to any and all references throughout the proposed Final Judgment to oral contracts, agreements or understandings, upon the ground and for the reason that the evidence does not support any Finding or Conclusion or Judgment concerning or based upon the existence of any oral contracts, agreements or understandings.

3. Defendant objects particularly to the reference in paragraph V of the proposed Final Judgment to "any independent dealer (including any independent dealer operating a rental outlet under a L.O., 3-C or 337 type of arrangement with defendant)".

This objection is made upon the ground and for the reason that said language is a deliberate and calculated

attempt to broaden the judgment beyond the three types of written arrangements therein described, and to include defendant's sales to so-called "uncontracted accounts" with respect to which accounts this Court has excluded all evidence as being immaterial and not responsive to any issues in this cause.

4. Defendant objects particularly to the first sentence of paragraph VI of the proposed Final Judgment which purports to enjoin defendant from exercising the 24-hour termination clause contained in the L.O. lease and to enjoin defendant from terminating any L.O. lease on less than thirty days' written notice to any L.O. operator.

This objection is made upon the ground and for the reason that such provision of the Final Judgment cannot [fol. 353] be lawfully predicated or founded upon any violation of either the Sherman or Clayton Anti-Trust Laws (even though such a violation were properly found to have occurred), but must be founded, if at all, upon an assumed violation of "state or federal law" as stated in the accompanying proposed Conclusion of Law #5. Accordingly such portion of the Final Judgment is beyond the power and jurisdiction of this Court upon the ground and for the reason stated in defendant's objection to said Conclusion of Law #5.

5. Defendant objects particularly to the second sentence of paragraph VI of the proposed Final Judgment which purports to enjoin defendant from exercising a supposed thirty-day cancellation privilege (not included in the lease) excepting and only for a breach of any of the written covenants contained in the written 542 form of lease on L.O. stations.

This objection is made upon the grounds and for the reasons:

(a) The same constitutes a deliberate and calculated attempt by the plaintiff to broaden and enlarge the Judgment and Decree of this Court beyond the scope thereof announced by this Court in its Opinion filed herein on July 2, 1951, which Opinion announces that defendant should be prohibited "from using the 24-hours' termination clause at all *to enforce its re-*

strictive conditions as to the products sold on the premises";

(b) The same constitutes a taking of defendant's property without compensation and without due process of law in that such portion of the Decree would prevent defendant from ever retaking possession of its property pursuant to its lawful contract rights, and would require defendant to continue to lease to the 1,361 L.O. operators the respective stations occupied by them for an indefinite and unlimited time in the [fol. 354] future and at a rental substantially less than the fair rental value of such stations;

(c) That said Final Judgment is unreasonable upon the grounds and for the reasons above stated.

6. Defendant objects particularly to the third sentence of paragraph VI of the proposed Final Judgment upon the ground and for the reason that the same is unreasonable and unnecessary for the effectuation of the Court's judgment.

7. Defendant objects particularly to paragraph VIII of the proposed Final Judgment to the extent that the same provides "provided, however, that the provisions of this paragraph shall not apply or operate to stay the going into immediate effect of the provisions of paragraph VI herein".

This objection is made upon the ground and for the reason that the same constitutes a deliberate and calculated attempt by the plaintiff to broaden and enlarge the Judgment and Decree of this Court beyond the scope thereof announced by this Court in its Decision and Order dated July 2, 1951, which provides in part:

> "5. In order not to deprive the defendant Richfield of the benefit of any appeal in the case, the permanent injunction to be issued shall be stayed until the expiration of six months after the Judgment shall have become final."

8. Defendant objects to the following portion of paragraph IX of the proposed Final Judgment, to wit:

> ". . . upon the written request of the Attorney General or the Assistant Attorney General, shall sub-

mit such reports with respect to matters contained in this judgment as may from time to time be necessary for the enforcement of the judgment, and . . ."

upon the ground and for the reasons:

(a) that the same is unreasonable and not required [fol. 355] for the proper enforcement of the Final Judgment; and

(b) that such provision was not included in the judgment of this Court made and entered in *United States* v. *Standard Oil Company of California*, No. 6159-Y, filed June 30, 1948.

9. Defendant objects particularly to the proposed Final Judgment on the ground that it fails to include as a provision thereof the following paragraph which was included and embodied in the final judgment by this Court in *United States* v. *Standard Oil Company of California*, No. 6159-Y, filed June 30, 1948, to wit:

"IX

Nothing contained in this judgment shall enjoin or restrain defendant from selling or contracting to sell petroleum products and/or automotive accessories including such products as are sponsored by defendant, to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree, for the storage, handling or dispensing of such products."

Dated: July 27, 1951.

Respectfully Submitted, William J. DeMartini, Robert E. Paradise, by ——— ———, Attorney for Defendant.

[fol. 356] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed August 2, 1951

Findings of Fact

1. This is a suit in equity by the United States to enjoin certain practices engaged in by the defendant alleged to be in violation of Section 1 of the Sherman Antitrust Act (26 Stat. 209 (1890), 15 U. S. C. Sec. 1) and Section 3 of the Clayton Act (38 Stat. 731 (1914), 15 U. S. C. Sec. 14). The Court has jurisdiction of the subject matter and the parties. The defendant Richfield Oil Corporation, hereinafter called "Richfield," has offices, transacts business, and is found within the Central Division of the Southern District of California.

2. Richfield is a corporation organized and existing under the laws of the State of Delaware and is engaged in the business of acquiring and developing oil reserves and in producing and refining petroleum products in the State of California, and in transporting, marketing, and distributing such products in the States of California, Oregon, Washing-[fol. 357] ton, Idaho, Nevada, and Arizona. Said States will hereinafter be collectively referred to as the Western area.

3. Richfield has for many years past and is at the present time leasing and acquiring title to service station sites, and entering into contractual relationships with operators of service stations for retail outlets within the Western area.

4. Definition of terms.

A. The term "service station," as used herein, refers to a retail outlet at which petroleum products and/or "automotive accessories" manufactured or "sponsored by" Richfield are sold or distributed to the motoring public by an "independent operator."

B. The term "independent operator," as used herein, refers to the operator of a "service station" who oper-

ates said service station as an independent business enterprise and not as an employee or agent of Richfield.

C. The term "petroleum products," as used herein, refers to those products obtained or manufactured from natural gases or crude oil by various processes and sold or used as a fuel or lubricant for automotive vehicles, together with miscellaneous oils and compounds derived from natural gases or crude oil and designated for various specific uses and includes such petroleum products as are manufactured or "sponsored by" Richfield and sold by it to independent operators.

D. The term "automotive accessories," as used herein, refers to replacement parts and articles other than "petroleum products" used on or in the servicing or repairing of automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, anti-freeze preparations, tire chains, waxes and polishes and other like items, and includes such "auto-
[fol. 358] motive accessories" as are "sponsored by" Richfield and sold by it or Richfield's authorized distributors to independent operators.

E. The term "sponsored by," as used herein, refers to those petroleum products and/or "automotive accessories" not manufactured or produced by Richfield, but sold and distributed at service stations, the sale and distribution of which are handled by or arranged for at service stations by Richfield.

F. The term "TBA distributor" (an abbreviation for a tire, battery, and accessory distributor), as used herein, is a distributor appointed by Richfield who receives and handles the orders of independent operators fo automotive accessories within a marketing area designated by Richfield.

G. The term "bulk plant," as used herein, refers to a central supply depot for gasoline, oils, lubricants, and other petroleum products, such plant being owned and operated by Richfield or its commission agent and supplying petroleum products manufactured and produced by Richfield to service stations.

5. Richfield does not have and has not had during the period covered by the complaint, except for a few instances during World War II, any employee-operated service stations in the Western area. From March 12, 1937, at which time Richfield commenced doing business, and continuing up to the present time, Richfield has entered into three basic types of arrangements with independent operators relating to the operation of service stations in the Western area. These three arrangements are based on various written and oral agreements and understandings. (a) The first type of arrangement relates to service stations hereinafter referred to as leased-out or L-O stations. The fee of the L-O service station premises is owned by Richfield or is leased for a term of years from a party other than an independent operator. Richfield enters into a written form of lease on the L-O station with an independent operator, who subsequently enters into possession of the service station premises. The independent operator thereafter carries on the business of buying and reselling petroleum [fol. 359] products and automotive accessories to the motoring public at the leased premises. The only written agreement between Richfield and the independent operator of the L-O station is in the form of a lease from Richfield to the independent operator pursuant to which possession of the service station is turned over to the independent operator. The written lease between Richfield and the independent operator has at all times been designated a "lease" on Richfield's form 542 and is represented by plaintiff's exhibits 1, 1A to 1G, inclusive, and plaintiff's exhibit 2. The form of the written lease has been revised by Richfield at various times but it has at all times in legal effect been a lease as distinguished from a license. A slightly different form of written lease but of substantially the same character as form 542 has been entered into between Richfield and independent operators with respect to certain service stations catering to the specific needs of truckers, which lease is designated "Truck Service Station Lease," and is represented by plaintiff's exhibit 2. (b) The second type of arrangement relates to service stations hereinafter referred to as "3-C Dealer Stations," the fee of which is owned by the independent operator or which is leased by

him for a designated period from a party other than Richfield. Three written agreements are concurrently entered into between Richfield and the operator of the 3-C dealer station, namely, a lease of the service station property from the operator to Richfield; a sublease to the operator from Richfield of the same service station property; and a sales contract covering the sale of petroleum products from Richfield to the operator. The written forms of these arrangements are represented by plaintiff's exhibits 3, 3A to 3D, inclusive, and plaintiff's 4, 4A to 4D, inclusive. This form of arrangement has been employed by Richfield throughout the period covered by the complaint. These written forms of agreements have likewise been revised from time to time by Richfield during the period of their use up to the present time. (c) The third type of arrangement relates to service stations hereinafter referred to as "337 Dealer Stations," the fee of which is owned by the independent operator or which is leased by him for a designated period from a party other than Richfield. The [fol. 360] written agreements entered into between Richfield and the operator of the 337 dealer station are a "Sales Contract," and a "Painting Agreement," and are represented by plaintiff's exhibits 5, 5A to I, inclusive.

The oral agreements between Richfield and the operators of the L-O, 3-C, and 337 dealer stations are entered into at substantially the same time as the written agreements and relate to the handling by the operator at his service station of petroleum products and automotive accessories manufactured or sponsored by Richfield on an exclusive basis.

6. On March 12, 1937, and continuing thereafter up to the present time, Richfield has acquired in the Western area service station properties in fee or by lease for a term of years. These service stations, designated as "L-O" stations, have throughout the foregoing period been leased by Richfield to independent operators under Lease form 542, by the terms of which the possession of the service station has been turned over to the independent operator. The lease contains no provision dealing with the purchase or sale of petroleum products or automotive accessories from or through Richfield, and there is no written agreement of

any kind between Richfield and the independent operator of the L-O station covering the purchase and sale of petroleum products and automotive accessories. Richfield has entered into oral contracts and understandings with the independent operators of the L-O stations, under the terms of which the independent operator is required to purchase all of the petroleum products and automotive accessories sold by him at such service station from Richfield.

7. The form of the 542 lease used by Richfield in 1937 (plaintiff's exhibit 1) provides that the service station property was leased to the independent operator for a minimum period of six months with a termination right in either party by written notice thirty days prior to the expiration of any six month period. This provision reads as follows:

> "To Have and To Hold unto Lessee for the period commencing ——, 19—, and continuing until terminated by either party on the — day of —— or the —— day of —— of any calendar year by means of a written [fol. 361] notice of election to terminate served on the other party in the manner herein prescribed in Paragraph '13' hereof at least thirty days prior to the effective date of termination therein specified."

8. Beginning in the year 1941 the form of lease agreement represented by plaintiff's exhibits 1 and 1A was superseded by a new form of lease (plaintiff's exhibit 1B), which provides that the lease could be terminated by either party with or without cause on 24 hours notice. This provision reads as follows:

> "Term To Have and To Hold unto Lessee for the period commencing ———, 19—, and continuing until terminated by either party by means of a written notice of election to terminate served on the other party in the manner prescribed in Paragraph '13' hereof at least twenty-four hours prior to the effective date of termination specified in such notice."

9. Although the form 542 lease underwent several revisions after 1941, the lease form thereafter used by Richfield, as was the fact prior thereto, at all times specified that the lessee should pay a minimum and specified rent

payable in advance on the first day of each month and contained the clauses usually found in leases, some of which are found in the current form of lease adopted by Richfield and used by it from and after January 1949 (plaintiff's exhibit 1G). Such provisions are as follows:

"Description of Property. That in consideration of the payment of the rents and the performance of the covenants and agreements herein set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of ——, County of ——, State of——, together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon, all as are fully described in Schedule 'A' hereof.

• • • • • • •

[fol. 362] "Rent It is further agreed:

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$——	May	$——	September	$——
February	——	June	——	October	——
March	——	July	——	November	——
April	——	August	——	December	——

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional part of a month shall be duly prorated on the basis of the rent for said month as herein specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, received by Lessee on the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January —¢ per gallon of gasoline in excess of —— gallons.

(The above sentence is repeated in the lease in the same style with respect to each of the other months of the year.)

said payments to be made on or before the tenth day of the next succeeding calendar month. In case of fractional monthly periods the number of gallons shown in the last column above will be duly prorated and the gallonage rental will be paid on the gallons of gasoline delivered in excess of such prorated amount.

. . . . . .

"Maintenance 3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, trees, shrubs, lawns, fixtures and equipment in good order and repair and in a clean and safe condi-[fol. 363] tion. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no material change or alteration in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

"Redelivery 4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair. Lessor shall not be liable to Lessee for any property left by Lessee in or on the demised premises.

. . . . . .

"Utilities 6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obliged to, pay such charges and lien obligations, and add the same to the rental payable hereunder.

"Default 7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency [fol. 364] proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceeding be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any pert thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and re-enter and resume possession of the premises, improvements, buildings, fixtures and equipment.

"Waiver 8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

"Assignment 9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained.

"Indemnity 10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his

agents, or employees thereon, or thereabout during the term hereof.

* * * * * * *

"Attorney's Fees 12. In the event Lessor shall employ an attorney or attorneys in connection with the pursuit of any of Lessor's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

* * * * * * *

[fol. 365] "Other agreements 14. From the effective date of commencement hereof, this lease terminates and supersedes any lease or other agreement between Lessee and Lessor, or the predecessors of Lessor, under the terms of which Lessee was privileged to occupy the demised premises or any portion thereof or any larger premises of which the premises demised hereby are a part.

"Execution 15. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee. It is agreed that the execution hereof has not been induced by any representation, warranty or agreement other than those herein expressed; and the terms hereof shall not be amended or varied except by a subsequent written instrument executed by the parties."

10. The L-O service station operator, upon entering into a lease of a service station with Richfield, takes possession of the service station premises leased to him and thereafter engages in the business of buying petroleum products and automotive accessories and reselling them at retail to the motoring public. The L-O operator generally has an investment in tools, equipment, and merchandise on the service station premises in amounts from $1,000 to $8,000. Upon executing the lease or taking possession of the leased premises, if the L-O operator is preceded by another lessee Richfield instructs the new L-O operator that he is not required to buy non-Richfield approved automotive

accessories or petroleum products then on the service station premises from the former lessee. The L-O operator expends his personal funds in sales solicitation and neighborhood advertising. He offers trade bonuses to his customers in the form of "green stamps" which are paid for by the operator. The L-O operator is solely responsible for his own acts and for those of any of his employees which may cause damage to the person or property of others. The L-O operator purchases and pays Richfield for [fol. 366] the gasoline and other petroleum products and for the sponsored automotive accessories sold to him by Richfield either directly or through the Richfield TBA distributor. These products are not consigned to the L-O operator by Richfield. The L-O operator is responsible for any trade or credit losses, except such as result from the extension of credit to customers carrying valid Richfield credit cards. In all respects the L-O operator is engaged on his own account and for profit in building up a clientele of customers who purchase the products handled by him at the retail service station which he operates.

11. Richfield does not pay the L-O operator any wages, salary, or other compensation. Richfield does not regard the L-O operator as an employee for the purpose of workmen's compensation, social security, unemployment taxes, or any of the withholding taxes, State or Federal, incidental to an employer-employee relationship. Richfield does not withhold any monies from the L-O operator for income tax purposes; and does not perform any of these functions as to any of the employees of the L-O operator.

12. The 24-hour cancellation clause was inserted in the form 542 lease by Richfield with the intent and purpose of effectively enforcing the illegal provisions of the oral contracts and understandings, more fully described in paragraphs 5 and 6 herein, and to enable Richfield to fully control the petroleum products and automotive accessories handled and sold by the L-O service station operator at an L-O service station. The 24-hour cancellation clause was never used by Richfield as a means of terminating the lease for the infraction of any of its express conditions. The tenancy of the L-O independent operator was of unlimited duration as long as the provisions of the oral agreements as

to exclusive dealing in Richfield petroleum products or automotive accessories were complied with. When Richfield representatives discovered petroleum products, automotive accessories, or signs advertising products competitive to those manufactured, sold, or sponsored by Richfield, at the service station of the independent L-O operator, threats to exercise the 24-hour cancellation provision were made, and such cancellation provision was in fact resorted to and exerted in enforcing the oral agreement and under-[fol. 367] standing mentioned in paragraphs 5 and 6 herein. On the termination of an L-O lease, it was Richfield's policy to instruct the new lessee that he was not required to buy from the outgoing lessee any non-Richfield petroleum products or automotive accessories, or other equipment owned by the outgoing lessee and located on the leased premises. The outgoing lessee was unable to dispose of such products to the incoming lessee because of the aforesaid Richfield instructions.

13. Beginning in 1937 and continuing until about 1945 Richfield used three written documents in connection with the 3-C dealer stations. These documents are sometimes referred to by Richfield as covering the 2-B arrangement and are represented by plaintiff's exhibits 3, 3A to 3D, inclusive. The 2-B arrangement consisted of (1) a lease, represented by plaintiff's exhibit 3, of the service station premises from the independent operator to Richfield for a term of years and at a specified rental; (2) a sublease, represented by plaintiff's exhibit 3A, from Richfield to the independent operator of the service station premises, by the terms of which Richfield leased the service station premises back to the independent operator for substantially the same term as the lease to Richfield and usually at substantially the same specified rental; and (3) a sales contract, represented by plaintiff's exhibit 3B, between Richfield and the independent operator pursuant to which the independent operator was obligated to purchase from Richfield a specified minimum amount of petroleum products sold by the operator at the service station covered by the lease and sublease referred to in (1) and (2) herein. Richfield discontinued the 2-B form of arrangement in 1944, at which time it was superseded by the 3-C type of arrangement. At the present time none of the 2-B type of written agreements

are in effect. The practical and intended purpose and effect of the minimum provision of the type of sales contract represented by plaintiff's exhibit 3B was to require the independent operator to purchase all of the petroleum products sold by the operator at the service station covered by the lease and sublease referred to in (1) and (2) herein from Richfield.

14. The forms of written agreements between Richfield and the independent operator of the 3-C service station [fol. 368] in use since 1945 to the present time consist of

(a) a lease of the service station property from the independent operator as lessor to Richfield, represented by plaintiff's exhibit 4;

(b) a sublease of the service station property back to the independent operator lessor, represented by plaintiff's exhibits 4A and 4D; and

(c) an "Operator's Sales Contract" between Richfield and the independent operator lessor, represented by plaintiff's exhibits 4B and 4C.

All three of the above agreements are executed concurrently and for a specified term, which may be as long as twenty years in duration.

15. The service station lease entered into between the independent operator as lessor and Richfield as lessee, referred to in paragraph 14(a) herein and represented by plaintiff's exhibit 4, contained the following provisions:

"2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law, or the whole or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station

thereon is taken for public use, this lease shall forthwith terminate.

• • • • • • •

"4. Lessee shall have the right and privilege of erecting, placing, operating and maintaining on said premises all buildings, structures, improvements, driveways, tanks, containers, piping, signs, appliances and equipment of any nature on, under, and above the ground that it may require or desire to use in [fol. 369] operating, transacting and conducting on said premises the business of storing, marketing and distributing petroleum products and automobile accessories by means of a gasoline and oil filling and service station, or by other marketing methods, and by any other business incident to that of a service station; it being understood that Lessee is not hereby restricted from using said premises for any other lawful purpose. Lessee shall have the further right and privilege of painting all or any part of the property leased hereunder so long as said property is not thereby unreasonably damaged; and Lessee may make such changes as it desires to any existing structures and improvements, but any structural alterations or changes made to improvements belonging to Lessor shall become part of the real estate and may not be removed by Lessee at the end of the term of the lease.

• • • • • • •

"8. Lessor agrees not to conduct or permit to be conducted on premises controlled by Lessor, if any, within two hundred (200) yards of the premises demised and leased, any business venture from which petroleum products other than those supplied by Lessee are sold or distributed.

• • • • • • •

"13. In the event of any termination of that certain Operator's Lease, executed concurrently herewith by and between the parties hereto, by the terms of

which Lessee herein as Lessor therein subleases the premises demised hereby to Lessor herein as Lessee therein, Lessee shall be privileged to forthwith terminate this lease by means of a notice in writing to Lessor. Any notice of the aforesaid nature may be served by Lessee at any time after but not before any termination of said Operator's Lease."

16. The service station sublease from Richfield, as lessor, to the independent operator lessor, as lessee, referred to in paragraph 14(b) herein, and represented by plaintiff's exhibit 4A, contains the following provision giving Rich- [fol. 370] field the right to terminate the sublease to the independent operator on five days notice in the event the sales contract between Richfield and the operator (represented by plaintiff's exhibit 4B) is cancelled:

"12. In the event of any termination of that certain Operator's Sales Contract executed concurrently herewith by and between the parties hereto, covering the purchase and sale of Lessee's entire requirements of certain petroleum products for resale from the premises demised hereby, Lessor shall be privileged to terminate this lease by means of a five (5) day notice in writing to Lessee."

17. The form of service station sublease used by Richfield after September 1948, referred to in paragraph 14(b) herein and represented by plaintiff's exhibit 4D, contains the following provision giving Richfield the right to terminate the sublease to the independent operator on seven days notice in the event the sales contract between Richfield and the operator (represented by plaintiff's exhibit 4C) is cancelled:

"12. In the event of any termination of that certain Operator's Sales Contract executed concurrently herewith by and between the parties hereto, covering the purchase and sale of certain petroleum products for resale from the premises demised hereby, Lessor shall be privileged to terminate this lease by means of a seven day notice in writing to Lessee."

18. The operator's sales contract referred to in paragraph 14(c) herein, entered into between Richfield and the independent operators, and represented by plaintiff's exhibit 4B, contained the following provisions requiring the independent operator to purchase his entire requirements with established minimums of petroleum products from Richfield and gave to Richfield the right to paint the service station of the independent operator with its colors and insignia and to charge him therefor in the event the operator's sales contract was cancelled prior to the termination date thereof:

> "1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, during the [fol. 371] period commencing ——, 19—, and ending ——, 19—, Buyer's entire requirements of the following automotive petroleum products for resale from the service station hereinafter mentioned, provided, however, that in no event shall Buyer purchase and receive during any calendar month of the term hereof less than the minimum quantities specified below:
>
> | | Minimum |
> |---|---|
> | Gasolines | gals. |
> | Lubricating oils | gals. |
> | Greases | lbs. |
>
> • • • • • • •
>
> "8. Seller shall be privileged at any time and from time to time during the term hereof to paint in its colors and insignia the buildings and equipment constituting the service station mentioned in paragraph numbered '4' hereof. In the event of any termination of this agreement prior to the expiration date set forth in paragraph numbered '1' hereof Buyer shall forthwith pay to Seller a sum equal to the total of all monies expended by Seller in performing such painting during the two (2) year period preceding such termination."

19. The entire requirements provisions of paragraph 1 of the operator's sales contract form represented by plain-

tiff's exhibit 4B, referred to in paragraph 18 herein, was revised by Richfield in August 1948. The revised form, represented by plaintiff's exhibit 4C and used by Richfield on 3-C transactions entered into after August 1948, requires the independent operator who is a party to a 3-C arrangement to purchase not less than a minimum nor more than a maximum specified amount of petroleum products from Richfield, and provides as follows:

> "1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the period commencing —— ——, 19—, and ending ———, 19—, the following petroleum [fol. 372] products in calendar monthly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified. For fractional monthly periods said amounts will be duly prorated.

	Minimum	Maximum
Gasolines	———gals.	———gals.
Lubricating Oils	———gals.	———gals.
Greases	———lbs.	———lbs."

The minimum quantities of gasoline, lubricating oils, and greases which the independent operator is required to purchase under the operator's sales contract (represented by plaintiff's exhibit 4C), are determined by Richfield and are usually fixed by it at 80 per cent of the anticipated requirements of the independent operator. The practical and intended purpose and effect of this minimum-maximum provision is to require the independent 3-C operator to purchase from Richfield all of the petroleum products sold by him at his service station.

20. The provisions of the written agreements referred to in paragraphs 13 to 19, inclusive, herein have been and are supplemented and modified by oral agreements and understandings between Richfield and the independent operators of the 3-C dealer service stations, which oral agreements and understandings provide that the independent operator of a 3-C dealer station shall secure his entire requirements of automotive accessories sold at such service stations, from or through Richfield.

21. Richfield has from March 12, 1937 continuously to the present time entered into written and oral agreements and understandings with the independent operators of the 337 dealer stations. The written agreements consist of sales and painting contracts which are represented by plaintiff's exhibits 5, 5A to 5I, inclusive. The oral agreements relate to the handling of petroleum products and automotive accessories.

22. The first form of written sales contract entered into between Richfield and the independent operator of a 337 dealer station was adopted by Richfield in 1937 and is represented by plaintiff's exhibit 5. This contract con- [fol. 373] tained a provision which required the independent operator to secure a certain and specified minimum amount of petroleum products from Richfield for a minimum period of one year. The contract could, however, be cancelled by Richfield at any time on five days notice to the independent operator. These provisions were as follows:

> "1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, the following petroleum products, in quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products, the same to be taken in fairly equal monthly quantities.
>
> | | Maximum | Minimum |
> |---|---|---|
> | Gasoline | ———gals. | ———gals. |
> | Lubricating Oils | ———gals. | ———gals. |
> | Greases | ———lbs. | ———lbs." |
>
> • • • • • • •
>
> "5. This agreement shall commence as of the — day of ———, 19—, and shall continued for a period of one year thereafter; provided, however, that Seller may terminate the same at any time by a five (5) days' notice in writing directed to Buyer."

23. No substantial change was made in the written form of sales contract (plaintiff's exhibit 5) until August 1948, after which time Richfield used a form of sales contract

represented by plaintiff's exhibits 5D and 5G. These forms of contracts are in use by Richfield at the present time. These forms (plaintiff's exhibits 5D and 5G) contain provisions which obligate the 337 independent service station operator to purchase a minimum amount of petroleum products from Richfield with a 30-day cancellation right in either party to the contract, as follows:

"1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by [fol. 374] Buyer, during the term hereof, the following petroleum products in calendar monthly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products. For fractional monthly periods said amounts will be duly prorated.

	Minimum	Maximum
Gasolines	———gals.	———gals.
Lubricating Oils	———gals.	———gals.
Greases	———lbs.	———lbs."

"The above quantities represent those to be purchased and sold under normal business conditions and in the event, because of climatic or other conditions, Buyer's sales are abnormally less during certain months of the year, the aforesaid quantities will be proportionately reduced for said months based upon previous business experience of Buyer's station or of business generally in the vicinity in the event Buyer's station has had no previous business experience.

"The obligation of Seller to deliver the minimum quantities above specified shall at all times be subject to Seller's right to be exercised within its sole and exclusive discretion with or without notice to discontinue, restrict and/or curtail the delivery of and/or to change the specifications of any product in the event of shortage of products, crude, base materials, additives, transportation, or labor and/or for any reason similar or dissimilar to the foregoing. Failure of Seller to fill any order or orders by reason of the aforesaid causes shall reduce the purchase obligations of Buyer to that extent. In the event that Seller is unable to make de-

livery to all of its customers by reason of any of the causes set forth in this paragraph and yet is able to make some deliveries, its failure to make deliveries in whole or in part to Buyer even while making de-
[fol. 375] liveries of the same or similar commodities to other buyers or consignees or to its own bulk storage and distributing plants, agents and distributors for sale and delivery to the general public, shall not constitute a default by Seller.

"2. This agreement shall commence as of the —— day of ———, 19—, and shall extend to and including the —— day of ———, 19—; subject, however, to termination by either party at any time during the term hereof by means of a thirty (30) day notice in writing to the other party."

24. The minimum-maximum provisions contained in paragraph 1 of plaintiff's exhibits 5D and 5G referred to in paragraph 23 herein are substantially the same and are comparable to the minimum-maximum provisions of the 2-B sales contract (plaintiff's exhibit 3B referred to in paragraph 13 herein) and the operator's sales contract (plaintiff's exhibit 4C referred to in paragraphs 19 and 20 herein), and the minimum requirement provisions contained in plaintiff's exhibits 5D and 5G were fixed and determined by Richfield, and the practical and intended purpose and effect of said provisions has been to require the 337 independent service station operator to secure his entire requirements of petroleum products from Richfield.

25. The written form of Richfield sales contract was usually accompanied by a painting agreement of the form represented by plaintiff's exhibits 5A, 5C, 5E, and 5F, depending on the date of execution of the painting contract. The aforesaid painting agreement contained various provisions which tied said agreement into the sales contract referred to in paragraphs 21 to 23, inclusive, herein, which provisions required the independent operator of a 337 service station to pay Richfield for the painting of his service station (plaintiff's exhibits 5, 5B, 5D, and 5G) in the event the sales contract was cancelled for any reason, and which provisions also gave Richfield the right to control the plac-

ing or removal of advertising signs, trade marks, and other insignia on the premises of the 337 service station operator. Such provisions are exemplified in plaintiff's exhibit 5A, as follows:

> [fol. 376] "That Whereas, Richfield as Seller, and Dealer as Buyer, have entered into a Sales Contract dated the — day of ——, 19—, for the term of one year commencing on the —— day of ———, 193—, under the terms of which Dealer as Buyer thereunder agreed to purchase and receive certain stated quantities of Richfield gasolines, lubricating oils and greases for resale at Dealer's service station located at ——; and
>
> "Whereas, Dealer desires to have the service station buildings at said location painted in Richfield colors and insignia and Richfield is willing, on certain conditions hereinafter set forth, to furnish the necessary work, labor and material and to paint the aforesaid service station buildings;
>
> "Now, Therefore, in consideration of the premises and of the covenants of the parties hereto, it is agreed:
>
> 1. That Richfield shall paint the aforesaid service station buildings at said location and furnish the necessary work, labor and materials therefor at a maximum cost of $——.
>
> 2. That Dealer shall pay to Richfield at the time of and upon any termination by Richfield of the above mentioned Sales Contract by reason of the breach by Dealer as Buyer thereunder of any of the terms, covenants or conditions therein contained, the sum of $—— for said work, labor and materials, together with a reasonable sum as attorneys fees in the event suit is instituted by Richfield to collect said sum, or any part thereof."

in plaintiff's exhibit 5C, as follows:

> "1. That Dealer shall remove from the surface of the service station which is to be painted all signs and insignia, and upon completion of the painting of said [fol. 377] service station by Richfield shall not place

upon or over the painted surfaces any advertising sign, trade mark, insignia or any other matter without first procuring the consent and approval of Richfield."

and in plaintiff's exhibit 5E (adopted in August 1948), as follows:

"1. That Dealer shall remove from the surface of the service station which is to be painted all signs, insignia, and obstructions, so that the obligations of Richfield hereunder may be performed with a minimum of hinderance."

26. The written sales and painting agreements referred to in paragraphs 21 to 25, inclusive, were and have been since 1937 supplemented by oral agreements and understandings which provide that the independent operator of the 337 service station shall purchase all of the petroleum products and automotive accessories sold by him at his service station from or through Richfield. The purpose and intended effect of the painting agreement is to secure an exclusive Richfield outlet, and no painting agreement is entered into by Richfield except upon the oral understanding that the independent operator of the 337 dealer service station will purchase his entire requirements of petroleum products and automotive accessories from or through Richfield. The obligation of the independent operator to pay for the cost of painting in the event the sales contract is terminated by him prior to the expiration of the term thereof was intended to and has had the effect of compelling the independent operator to purchase all of his requirements of petroleum products and automotive accessories from or through Richfield. The painting agreements and the oral agreements and understandings supplementing the same have had the intended effect of shutting out all competition for the petroleum products and automotive accessory business of the 337 independent service station operator.

27. The relationship established by the written and oral contracts and agreements described and referred to in paragraphs 5 to 26, inclusive, is not that of employer and employee, or principal and agent, but that of independent

contractor, and each independent operator is an independent business man.

28. Beginning in or about June 1938, with the purpose and [fol. 378] intent of further effectuating and enforcing the exclusive dealing provisions of the written and oral contracts between Richfield and the independent operators of the L-O, 3-C dealer, and 337 dealer service stations, Richfield adopted the policy of refusing to sell gasoline to the independent operator of any service station handling or selling gasoline competitive to Richfield gasoline. Pursuant to this policy Richfield withdrew from all split pump accounts and refused to sell gasoline to any independent operator of the L-O, 3-C dealer, and 337 dealer stations except on the oral condition, understanding, and agreement that the independent operator purchase all of his requirements of gasoline from Richfield. Richfield has not, in fact, since said time sold or supplied gasoline to any independent operator who has not in fact purchased all of his gasoline requirements from Richfield regardless of the provisions of any written sales contract with said independent operator. When the independent operator wished to operate his station as a split pump station, Richfield terminated all supply arrangements with such operators. Said policy has had the effect, as intended by Richfield, of preventing the independent operator of an L-O, 3-C dealer, or 337 dealer station from handling or selling gasoline competitive to Richfield at said stations and of preventing the operator of the 3-C or 337 dealer stations from purchasing any quantities of gasoline above the specified minimums designated in the written forms of sales contracts (plaintiff's exhibits 3B, 4C, 5, 5B, 5D, and 5G) from any manufacturer or supplier of gasoline other than Richfield.

29. Richfield inspects, polices, and supervises the activities and sales of the independent operators at the 2,965 service stations to make certain that no petroleum products or automotive accessories except those designated by defendant were or are sold, featured, or handled by the independent operator at the service station operated by him.

30. The number of service stations subject to the written and oral agreements referred to in paragraphs 5 to 26, inclusive, was 2,171 as of December 31, 1938 and 2,965 as of December 31, 1950.

31. The number of service stations of each of the three types located in each of the six Western States on the above dates is as follows:

[fol. 379]

December 31, 1938 Type of Station	Arizona	California	Idaho	Nevada	Oregon	Washington	Total
L–O	83	769	1	12	78	160	1,103
3–C Dealer (form 2–B in 1938)	0	269	1	3	80	159	512
337 Dealer	96	218	0	6	119	117	556
	179	1,256	2	21	277	436	2,171
December 31, 1950 Type of Station							
L–O	70	870	16	21	148	218	1,343
3–C Dealer	17	116	.....	3	45	80	261
337 Dealer	74	695	40	22	221	309	1,361
	161	1,681	56	46	414	607	2,965

32. As of December 31, 1950 there were 4,581 written agreements of the types described in paragraphs 5 to 26, inclusive, in full force and effect in the six States of the Western area, as follows:

Type of Agreement	Arizona	California	Idaho	Nevada	Oregon	Washington	Total
Lease (form 542) (pl. exh. 1G)	70	870	16	21	148	218	1,343
3–C Service Station Lease (form 362) (pl. exh. 4)	17	116	.....	3	45	80	261
3–C Operator's Lease (form 668) (pl. exhs. 4A and 4D)	17	116	.....	3	45	80	261
3–C Sales Contract (form 783) (pl. exhs. 4B and 4C)	17	116	.....	3	45	80	261
Sales Contract (form 337) (pl. exhs. 5B and 5D)	74	695	40	22	221	309	1,361
Painting Agreement (form 59) (Pl. exhs. 5C, 5E, 5F)							1,094
GRAND TOTAL							4,581

33. The aforesaid 4,581 written leases, sales contracts, and painting agreements were supplemented by the oral agreements and understandings referred to in paragraph 5 herein, which were superimposed by Richfield on the

[fol. 380] written agreements in effect with respect to the operators of the 2,965 service stations, which confine the operations of the stations to which they apply to dealing exclusively with Richfield petroleum products and automotive accessories handled or sponsored by Richfield. The total number of agreements and understandings, written and oral, as of December 31, 1950 was approximately 7,546.

34. The total approximate dollar volume of business done between Richfield and the independent service station operators under the 7,546 written and oral agreements at the 2,965 service station outlets referred to in paragraphs 30 and 31 herein, for the year 1950 was $43,174,243.00.

35. The total quantity and approximate dollar volume of sales of petroleum products by Richfield to each of the three types of stations referred to in paragraph 31 herein, for the years 1938 and 1950 was as follows:

1938—Quantity Volume	Gasoline	Lubricating Oils & Greases (Not broken down as to types of outlets)
L-O Stations	75,772,000 Gals.	
3-C (2-B) Dealer Stations	38,641,000 Gals.	
337 Dealer Stations	12,166,000 Gals.	
Total (all stations)	126,579,000 Gals.	2,647,424 Gals.

1938—Approximate Dollar Value	Gasoline	Lubricating Oils & Greases (Not broken down as to types of outlets)
L-O Stations	$ 8,158,352.00	
3-C (2-B) Dealer Stations	4,160,466.00	
337 Dealer Stations	1,371,643.00	
Total (all stations)	$13,690,461.00	$1,098,971.68

1950 Quantity Volume		
L-O Stations	160,759,000 Gals.	
3-C Dealer Stations	20,385,000 Gals.	
337 Dealer Stations	67,476,000 Gals.	
Total (all stations)	248,620,000 Gals.	3,491,369 Gals.

[fol. 381]

1950 Dollar Value	Gasoline	Lubricating Oils & Greases (Not broken down as to types of outlets)
L-O Stations	$23,790,968.00	
3-C Dealer Stations	3,069,987.00	
Dealer Stations	10,164,158.00	
Total (all stations)	$37,025,113.00	$2,546,127.59

36. In 1938, Richfield sold and distributed tires and tubes in the amount of $183,310.00 to the 2,171 retail service stations referred to in paragraph 31 herein. In addition, automotive accessories in the amount of $295,672.16 were shipped by manufacturers and suppliers for distribution to the aforesaid retail service stations upon which sales Richfield received commissions in the amount of $23,864.68.

37. Beginning in 1944, Richfield inaugurated a new TBA program for distributing its automotive accessories to the L-O, 3-C, and 337 dealer service stations. Since 1944, Richfield has sold and distributed automotive accessories which it purchases from various manufacturers and suppliers directly to the L-O, 3-C, or 337 dealer service stations or through TBA distributors designated by it. In addition, the manufacturers and suppliers of automotive accessories ship various automotive accessories to TBA distributors for distribution to such service station dealers, upon which sales Richfield receives commissions from the manufacturer and supplier. The total dollar volume of automotive accessories sold or distributed by Richfield for the year 1950 to the 2,965 L-O, 3-C, and 337 dealer service stations referred to in paragraph 31 herein was $3,603,003.85, broken down into products sold as follows:

1950	Tires & Tubes	Batteries	Other Accessories
Direct sales by Richfield to Dealers	$ 167,946.41	$ 17,323.36	$.....
Sales to dealers by TBA distributor of automotive accessories purchased from manufacturers and suppliers by Richfield	1,872,595.02	388,345.12	733,746.34
Sales to dealers by TBA distributor of automotive accessories shipped by manufacturers upon which Richfield received a commission	.....	.....	423,047.60
	$2,040,541.43	$405,668.48	$1,156,793.94

[fol. 382] Total amount of tires and tubes, batteries, and other accessories $3,603,003.85.

38. The main offices of Richfield are located at Los Angeles, California. Richfield has three divisional offices which are located at Seattle, Washington; San Francisco, California; and Los Angeles, California. The written

agreements mentioned in paragraphs 5 and 32 and which are in effect in the six States of the Western area were executed and approved either at the main Richfield office in Los Angeles, California or at one of its three divisional offices. The written agreements with the L-O, 3-C, and 337 dealer service station operators in the States of Oregon, Washington, and Idaho are executed and approved at Seattle, Washington. The written agreements with the L-O, 3-C, and 337 dealer service station operators for the Northern part of California and the Northern part of Nevada are executed and approved at San Francisco. The written agreements with the L-O, 3-C, and 337 dealer service station operators for the Southern part of California, Southern Nevada, and the State of Arizona are executed and approved at Los Angeles. Some of the written contracts referred to in paragraphs 5 and 30 herein must be approved at Richfield's main office in Los Angeles.

39. The written and oral agreements referred to in paragraphs 32 and 33 herein contemplate the movement and distribution of goods originating in interstate commerce. There is a constant flow in interstate commerce of the products produced, distributed, and sold by Richfield. The transactions under the agreements are in the course of interstate commerce, directly affect the independent dealer, prevent him from dealing with competitive suppliers, and directly affect the shipment of competitive goods originating in interstate sources.

40. Richfield distributes and sells, or arranges for the distribution and sale, of "petroleum products" and "automotive accessories" to retail service station outlets in the six States of the Western area. Richfield has oil reserves and producing wells in certain oil fields in California. Crude oil is transported by Richfield from producing wells in California to its refineries located at Watson and Vinvale, California. At the Watson refinery crude oil is refined into gasoline and other petroleum products. [fol. 383] Richfield owns and operates two natural gasoline plants in California. Gasoline and other petroleum products refined at the gasoline plants in California are shipped by Richfield to its Watson refinery. The petroleum products refined at its refinery at Watson, California are

in some instances shipped by Richfield from its Watson refinery to bulk plants located in the States of California, Oregon, Washington, Arizona, Nevada, and Idaho. In excess of 65 per cent of the gasoline and petroleum products refined at its Watson refinery and shipped to States other than California are shipped by Richfield from said refinery to marine terminals and from such marine terminals to bulk plants. Shipments are made by Richfield to its marine terminals and bulk plants for the purpose of distributing and selling petroleum products to retail service stations in the six States of the Western area.

41. Richfield owns 107 bulk plants in California, of which 23 are operated by Richfield and 84 by commission agents from which petroleum products are distributed by Richfield and commission agents to 1,577 service stations in California. It owns 35 bulk plants in Oregon, of which 2 are operated by Richfield and 33 by commission agents, from which bulk plants petroleum products are distributed by Richfield and commission agents to 388 service stations in Oregon. Richfield owns 36 bulk plants in Washington, of which 4 are operated by it and 32 by commission agents, and from which bulk plants petroleum products are distributed by Richfield and commission agents to 646 service stations in Washington. Richfield owns 7 bulk plants in Nevada, all of which are operated by commission agents and from which petroleum products are distributed by commission agents to 39 service stations in Nevada. Richfield owns 5 bulk plants in Idaho, all of which are operated by commission agents, from which petroleum products are distributed by Richfield and commission agents to 56 service stations in Idaho. Richfield owns 22 bulk plants in Arizona, of which 2 are operated by Richfield and 20 by commission agents, from which petroleum products are distributed by Richfield and commission agents to 190 service stations in Arizona. In a few instances petroleum products have been delivered from bulk plants in one State to service stations located in other States.

[fol. 384] 42. The title in and control of all petroleum products distributed by Richfield are retained by it until delivery is made to the independent operator of the L-O, 3-C, and 337 service station at his respective station. Ship-

ments from the Watson refinery directly to bulk plants or to marine terminals for shipment to bulk plants are made according to anticipated needs or as ordered. There is a constant flow of petroleum products from the refinery at Watson, California to the bulk plants located in each of the six States of the Western area.

43. The automotive accessories which are distributed and sold by Richfield to independent service station operators are manufactured by companies other than Richfield and are shipped by such manufacturers to a designated Richfield TBA distributor or, in some instances, directly to service station operators, from factories located both within and outside the States of the Western area. Richfield has entered into arrangements with approximately 225 TBA distributors to receive and handle the orders of independent service station operators for automotive accessories within marketing areas designated for each TBA distributor by Richfield. Approximately 175 of such TBA distributors also act as commission bulk plant agents of Richfield for the distribution of petroleum products under a commission agency agreement. In 1940 and for a short time thereafter the form of commission agency agreement specified that the commission agent should "purchase or accept on consignment from persons, firms or corporations designated by Richfield, Agent's entire requirements of such automotive accessories and petroleum products as Richfield does not sell or distribute. The arrangement between Richfield and the TBA distributor has, since that time, been an oral one whereby the TBA distributor agrees to handle and sell automotive accessories within an area designated by Richfield to the independent operators who have entered into the written and oral agreements mentioned in paragraphs 32 and 33 herein. Under the terms of such oral agreements the TBA distributor is required to report to Richfield on all sales of automotive accessories made to independent operators and to further report instances in which said operators are selling or acquiring automotive accessories from or through sources other than Richfield.

[fol. 385] 44. Orders for automotive accessories are in some instances placed with the manufacturers thereof by Richfield with instructions to make shipment from the place

of manufacture to a designated TBA distributor and, in other instances, orders are placed directly by the TBA distributors with the manufacturer for Richfield's account and shipment is made to such distributors who are located in the six States of the Western area. Such shipments are generally made in interstate commerce by the manufacturer to the TBA distributor and by him sold and delivered to the L-O, 3-C, and 337 service station operators. The manufacturer of the automotive accessory bills Richfield for all orders filled by it with the exception of certain miscellaneous automotive accessories upon which Richfield receives commissions from the manufacturers thereof for all orders filled by it whether received from either Richfield or the TBA distributor. Richfield, in turn, bills the TBA distributor for all automotive accessories delivered to the TBA distributor by the manufacturer thereof. The TBA distributor bills the independent service station operator for all products ordered by him from or through the TBA distributor.

45. Numerous manufacturers and producers of petroleum products and automotive accessories located both inside and outside the Western area, other than those producers and manufacturers whose products are sponsored and marketed by Richfield, are prepared to and have attempted to sell their respective brands of petroleum products, tires, tubes, batteries, and other accessories to independent operators within the Western area who have entered into the written and oral agreements mentioned in paragraphs 32 and 33 herein. Many such manufacturers and producers have factories or refineries located in States outside the Western area and are engaged in the business of marketing their petroleum products or automotive accessories within the Western area. Other manufacturers and producers located within the Western area make, sell, and distribute petroleum products or automotive accessories in interstate commerce throughout the six States of the Western area. In many instances direct sales representatives of manufacturers and producers have unsuccessfully attempted to sell the independent operators who were and still are [fol. 386] parties to the written or oral agreements hereinbefore referred to.

46. The manufacturers, producers, distributors, and sellers of products competitive to those sold or distributed by Richfield to the independent operators have been unable to sell their petroleum products and automotive accessories and have been unable to increase their sales or compete for a part of the market represented by the three types of retail service station outlets, the independent operators of which are subject to the written and oral contracts and understandings mentioned in paragraphs 32 and 33 herein. Such agreements and understandings, written and oral, have denied to manufacturers and suppliers of such competitive products access to the 2,965 service stations operated by the independent operators.

47. The intent, purpose, and effect of the exclusive supply provisions of the written and oral agreements and understandings mentioned in paragraphs 32 and 33 herein, have been to prevent the independent operator subject to said agreements and understandings from handling any petroleum products, tires, tubes, batteries, and automotive accessories other than those manufactured, sold, supplied, or sponsored by Richfield. When the independent operator handled products competitive to those manufactured, distributed, or sponsored by Richfield he did not do so openly nor did he display signs advertising such competitive products. Independent operators have been denied access to competitive products by the provisions of the foregoing agreements and understandings and have been prevented from purchasing petroleum products or automotive accessories in an open and competitive market of the quality which they desire and at prices determined by free and open competition despite the availability of competitive products demanded by customers or offered for sale to the independent operator at prices lower than the prices prevailing for equivalent items of sponsored automotive accessories. The written and oral agreements and understandings are intended to and in practice do confine the independent operators to the particular products and automotive accessories handled or sponsored by Richfield.

48. The direct flow of interstate commerce in petroleum products and automotive accessories has been affected by the written and oral agreements mentioned in paragraphs

[fol. 387] 32 and 33 herein, (1) by channeling the products manufactured or sponsored by Richfield, regardless of their interstate or intrastate source, through an exclusive group of outlets; (2) by denying the independent service station operators the right to buy products competitive thereto; and (3) by denying manufacturers of competitive products the right to sell the independent operators at the 2,965 service stations.

Conclusions of Law

1. Richfield is engaged in the manufacture, sale, and/or distribution of petroleum products and automotive accessories in interstate commerce and in the course of such commerce has entered into contracts, agreements, and understandings, both written and oral, which provide for the sale and distribution of such petroleum products and automotive accessories to independent operators in interstate commerce.

2. The written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive, 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, directly affect and unreasonably restrain the course of interstate commerce in petroleum products and automotive accessories in violation of Section 1 of the Sherman Act (26 Stat. 209; 15 U. S. C. 1).

3. The written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, substantially lessen competition and tend to create a monopoly in the sale and distribution of petroleum products and automotive accessories in violation of Section 3 of the Clayton Act (38 Stat. 736; 15 U. S. C. 14).

4. The relationship established by the written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, is not that of employer and employee or principal and agent, but is that of an independent contractor.

5. The relationship established by the written lease en- [fol. 388] tered into between Richfield and the independent L-O operator lessee (of which plaintiff's exhibits 1B to

1G are representative forms) is that of landlord and tenant, and the 24-hour termination clause contained in said L-O lease forms is invalid, against public policy, and cannot, either under State or Federal law, be enforced as a means of terminating the lease for even legal grounds by any notice by either side less than at least the minimum rental period for which rent is reserved—one month.

6. The written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, have had the necessary and intended effect of foreclosing competition in the sale of petroleum products and automotive accessories from a substantial market for such products in the six States of the Western area.

7. The written and oral contracts, agreements, and understandings described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, unreasonably restrain and substantially lessen competition in an appreciable segment of interstate commerce in the six Western States of the Western area in the sale and distribution of petroleum products and automotive accessories.

8. The written and oral contracts and agreements described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, have had the necessary and intended effect of denying the independent operators access to products competitive to those manufactured, handled, and sponsored by Richfield and of locking out such operators from the sources of such products originating in interstate commerce. Such written and oral contracts, agreements, and understandings also confine the independent operators to the handling of and dealing in petroleum products and automotive accessories manufactured, handled, or sponsored by Richfield.

9. The written and oral contracts and agreements described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, have had the necessary and intended effect of denying manufacturers and suppliers of petroleum and automotive [fol. 389] accessories competitive to those manufactured or sponsored by Richfield access to a substantial number of

potential outlets for the sale of their products in the six States of the Western area.

10. The number of outlets and the volume of business in petroleum products and automotive accessories foreclosed to competition by the written and oral contracts and agreements described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, and in effect in the six States of the Western area is substantial whether considered comparatively or not.

11. The provisions of the written and oral contracts and agreements described and referred to in paragraphs 5, 6 to 9, inclusive; 13 to 28, inclusive; 30, 32 and 33; 39, 43, 45 to 48, inclusive, are illegal in their effect and the plaintiff is entitled to an injunction and other equitable relief as prayed for.

Dated this 2nd day of August, 1951.

Leon R. Yankwich, United States District Judge.

[fol. 390] [File endorsement omitted]

UNITED STATES DISTRICT COURT

Civil Action No. 6896-Y

UNITED STATES OF AMERICA, Plaintiff

v.

RICHFIELD OIL CORPORATION, Defendant

FINAL JUDGMENT—Filed August 2, 1951, Docketed August 3, 1951

The Court having rendered its opinion herein on July 2, 1951; having duly considered the proposals of the parties as to its judgment, and having filed its findings of fact and conclusions of law, wherein the defendant herein was found to have violated Section 1 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, and Section 3 of the Clayton Act,

It is hereby ordered, adjudged, and decreed as follows:

I

As used herein, "Richfield" refers to the defendant Richfield Oil Corporation.

As used herein, the term "retail outlet" refers to any service station at which "petroleum products" and/or "automotive accessories" manufactured or "sponsored by" Richfield are sold or distributed by an "independent dealer."

As used herein, the term "independent dealer" refers to the operator of any "retail outlet" who operates such retail outlet as an independent business enterprise and not as an [fol. 391] employee or agent of Richfield.

As used herein, the term "petroleum products" refers to products obtained or manufactured from natural gases or crude oil by any process and sold or used as a fuel or lubricant for automotive vehicles, together with miscellaneous oils and compounds derived from such natural gases or crude oils and designated for various specific uses and includes such petroleum products as are manufactured or "sponsored by" Richfield and sold by Richfield to an independent dealer and by him resold to the user or consumer at a retail outlet.

As used herein, the term "automotive accessories" refers to replacement parts and articles other than "petroleum products" used on or in the servicing or repairing of automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, antifreeze preparations, tire chains, waxes and polishes and other like items, and includes such "automotive accessories" as are manufactured or "sponsored by" Richfield and sold or otherwise distributed by it to an independent dealer and by him resold to the user or consumer at a retail outlet.

The term "sponsored by," as used herein, refers to petroleum products and/or "automotive accessories" which are not manufactured or produced by Richfield.

II

Richfield has entered into contracts consisting of written and oral agreements and understandings which unreasonably restrain interstate trade and commerce in petroleum products and automotive accessories in violation of Section 1 of the Act of Congress of July 2, 1890, as amended, 26 Stat. 209; 15 U.S.C. § 1, commonly known as the Sherman Act.

III

Richfield has entered into contracts consisting of written and oral agreements and understandings, the effect of which [fol. 392] has been to substantially lessen competition and tend to create a monopoly in the sale and distribution of petroleum products and automotive accessories, in violation of Section 3 of the Act of Congress of October 15, 1914, as amended, 38 Stat. 731; 15 U.S.C. § 14, commonly known as the Clayton Act.

IV

All of the provisions of any written or oral agreement or understanding between Richfield and any independent dealer, including any written or oral agreement or understanding between Richfield and any independent dealer operating a retail outlet under an "L-O," "3-C," or "337" type of arrangement, and all provisions of like or similar import or effect, either expressed or implied, in any other written or oral agreement or understanding between Richfield and any independent dealer which contains the condition, agreement, or understanding that said independent dealer shall purchase or acquire for sale all of his requirements of petroleum products and/or automotive accessories which are used or sold, or bought to be used or sold, by said independent dealer at a retail outlet from or through defendant or any of its representatives, are hereby adjudged unlawful and declared illegal and void.

V

Richfield, its successors or assigns, its officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on its behalf, are hereby perpetually enjoined from entering into or enforcing the provi-

sions of any contract, agreement, or understanding, written or oral, expressed or implied, with any independent dealer (including any independent dealer operating a retail outlet under an L-O, 3-C, or 337 type of arrangement with defendant) or from inducing or compelling or attempting to induce or compel, by any means whatsoever, any independent dealer (including any independent dealer operating a retail [fol. 393] outlet under an L-O, 3-C, or 337 type of arrangement with defendant) to enter into any contract, agreement, or understanding, written or oral, expressed or implied, or of any kind whatsoever, which has the purpose or effect or which provides:

(a) that the independent dealer shall secure all of his requirements of any petroleum product from or through Richfield or shall not handle the petroleum product of any other company;

(b) that the independent dealer shall secure all of his requirements of any one or more automotive accessories or types of automotive accessories from or through Richfield, or will not handle automotive accessories competitive with those distributed or sponsored by defendant or which prevent him from handling or acquiring for sale any automotive accessory or type of accessory from or through sources other than defendant;

(c) that the sale of any petroleum product or automotive accessory by Richfield to any independent dealer shall be conditioned on the handling by the independent dealer of petroleum products or automotive accessories manufactured or sponsored by the defendant.

VI

Richfield, its successors or assigns, its officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on its behalf, are hereby perpetually enjoined from exercising the 24-hour termination clause contained in any lease which it now has with or which is in effect between itself and any independent dealer operating a retail outlet under an L-O type of arrangement with defendant, and is perpetually enjoined from cancelling any lease which it now has with or which may be in effect between itself and any independent dealer operating a retail

service station under the L-O type of arrangement on less than 30-days' written notice to any such dealer. Such 30-day cancellation privilege may be exercised by defendant only [fol. 394] for a breach of any of the written covenants contained in any written lease entered into between Richfield and an independent dealer operating a retail outlet under the L-O type of arrangement and by written notice sent by registered mail to such dealer advising him of such alleged breach and notice of cancellation therefor. A copy of any such written notice of cancellation shall be sent by registered mail to the Attorney General of the United States or to his duly authorized representative designated by the Attorney General in writing to Richfield at the time said written notice of cancellation is sent to such dealer by defendant.

VII

Within sixty days after this judgment shall become operative and go into effect, Richfield shall send written notice by registered mail to each independent dealer with whom it then has existing written or oral contractual relations of the provisions of this decree in such form as is first approved by the attorneys for the plaintiff or by the Court in the event the attorneys for the plaintiff and Richfield are unable to agree on the form of such written notice.

VIII

The enforcement of this judgment is stayed until the expiration of six (6) months from the date of the entry of this judgment and, in the event an appeal is taken from this judgment, or any part thereof, the enforcement of this judgment is stayed until the expiration of six (6) months from the date such appeal is finally determined.

[fol. 395]

IX

For the purpose of securing compliance with this judgment the defendant, upon the written request of the Attorney General or the Assistant Attorney General, shall submit such reports with respect to matters contained in this judgment as may from time to time be necessary for the enforcement of the judgment, and any duly authorized representative or representatives of the Department of Justice

shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on notice reasonable as to time and subject matter to Richfield, made to its principal office at Los Angeles, California, and subject to any legally recognized privilege, be permitted (1) access in the presence of defendant's counsel or other representative during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment; (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this paragraph shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

X

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to app'y to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or [fol. 396] carrying out of this judgment, for the amendment, modifications, or termination of any of the provisions thereof, for the enforcement of compliance herewith and for the punishment of violations thereof.

XI

Judgment is entered against the defendant for all costs to be taxed in this proceeding. Costs taxed at $11,631.24.

Dated: August 2, 1951.

Leon R. Yankwich, United States District Judge.

Approved as to form

William J. DeMartini, Krystal & Paradise, Robert E. Paradise, By —— ——, Attorneys for Defendant.

William C. Dixon, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney; Theron M. Hall, Special Attorney; Theodore M. Alexander, Special Attorney; T. Keister Greer, Special Attorney, By Lawrence W. Somerville, Attorneys for Plaintiff.

[fol. 397] IN UNITED STATES DISTRICT COURT

[File endorsement omitted]

[Title omitted]

NOTICE OF MOTION FOR AMENDMENT TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL JUDGMENT—filed August 10, 1951

To Plaintiff and its Attorneys:

Please take notice that on August 17, 1951, at the hour of 10 a. m., or as soon thereafter as defendant's counsel may be heard, defendant will move the above entitled court in the Court Room of the Honorable Leon R. Yankwich, Judge of said court, in the United States Post Office and Court House Building in Los Angeles, California, to grant the motion which is attached hereto.

Said motion will be made upon and reference will be made to the records, papers, pleadings and files herein, including the reporter's transcript of proceedings at the trial, the [fol. 398] exhibits received in evidence, the testimony offered and rejected, the Opinion and Order of the Court filed on July 23, 1951, and the Findings of Fact, Conclusions of Law and Final Judgment made, entered and filed herein on August 2, 1951.

Said motion will be made under and pursuant to the provisions of Rule 52 of the Federal Rules of Civil Procedure, as amended.

Dated: August 10, 1951.

William J. DeMartini, Robert E. Paradise; By Robert E. Paradise, Attorneys for Defendant.

Order Shortening Time

It appearing that the Honorable Leon R. Yankwich, the Judge who tried the above entitled cause, is presently absent from the City of Los Angeles, and will be in the City of Los Angeles for the purpose of hearings only on the 17th of August, 1951;

Now, therefore, it is hereby ordered that the time for service of the attached Notice of Motion and Motion be, and the same is hereby, shortened to permit service thereof upon attorneys for the plaintiff on or before August 10th, 1951; and

It is hereby further ordered that the said motion shall be heard before the Honorable Leon R. Yankwich on August 17, 1951.

James M. Carter, Judge of the District Court.

[fol. 399] In United States District Court

[Title omitted]

Motion for Amendment to Findings of Fact, Conclusions of Law and Final Judgment Made, Entered and Filed Herein on August 2, 1951

Comes now defendant, Richfield Oil Corporation (hereinafter referred to as "Richfield"), and moves the Court, pursuant to Rule 52 of the Federal Rules of Civil Procedure, as amended, to amend its Findings of Fact, Conclusions of Law and Final Judgment herein, made, entered and filed on August 2, 1951, in the following respects and for the following grounds and reasons:

I

Findings of Fact

A. Richfield moves to amend the following particular findings of fact:

[fol. 400] 1. Richfield moves to amend Findings 5, 6, 12, 27, 28, 30, 33, 34, 39, 45, 46, 47 and 48 to strike therefrom all references to any oral contracts, agreements or under-

standings between Richfield and the operator of any L-O service station.

Said motion is made upon the ground and for the reason that said portions of said Findings are clearly erroneous in that they are contrary to the uncontradicted evidence to the effect that there is no oral agreement between Richfield and the operator of any L-O station; and that, on the contrary, each L-O operator is *instructed* orally with respect to the various and detailed requirements imposed by Richfield as conditions upon the L-O operator's occupancy of Richfield L-O stations.

2. Richfield moves to amend Findings 5, 20, 21, 26, 27, 28, 30, 33, 34, 39, 45, 46, 47 and 48 to strike therefrom all references to any oral contracts, agreements or understandings between Richfield and any 337 service station dealer or any 3-C service station dealer.

Said motion is made upon the ground and for the reason that said portions of said Findings are clearly erroneous in that there is no evidence whatsoever of any oral agreement or understanding of any nature between Richfield and any one or more of the 337 type of service station dealers who operate any of the 1361 stations of that type, or between Richfield and any one or more of the 3-C type of service station dealers who operate any of the 261 stations of that type.

3. Richfield moves to amend subparagraph (c) of Finding 5 in such manner to eliminate therefrom the clearly erroneous implication that a written Sales Contract and a written Painting Agreement are made with each 337 dealer.

Said motion is made upon the ground that without such amendment said Finding 5 is contrary to the Stipulation of [fol. 401] Facts (Def. Ex. L and Pl. Ex. 26-A, pp. 28-29). For example, as of December 31, 1950, a Painting Agreement was made concurrently with the Sales Contract with only 853 out of a total of 1361 stations of the 337 type.

4. Richfield moves to amend Finding 10 by striking therefrom the following portion thereof, to wit:

> "The L-O operator is solely responsible for his own acts and for those of any of his employees which may cause damage to the person or property of others."

Said motion is made upon the ground that said Finding is clearly erroneous and that there is no evidence whatsoever in support thereof.

5. Richfield moves to amend the first sentence of Finding 12 to state that the 24-hour cancellation clause was inserted in the Form 542 lease with the intent and purpose of enabling Richfield to fully control the operation and maintenance of the L-O stations including, but not limited to, the control of the type of petroleum and other products handled and sold therein.

Said motion is made upon the ground that the first sentence of Finding 12 is a part truth only; and that the same is clearly erroneous to the extent that it implies that the 24-hour cancellation clause was intended for the sole purpose of controlling the petroleum products and automotive accessories handled and sold at the L-O stations.

6. Richfield moves to strike the following portion of Finding 12, to-wit:

> "The 24-hour cancellation clause was never used by Richfield as a means of terminating the lease for the infraction of any of its express conditions. The tenancy of the L-O independent operator was of unlimited duration as long as the provisions of the oral agree- [fol. 402] ments as to exclusive dealing in Richfield petroleum products or automotoive accessories were complied with."

Said motion is made upon the ground that said quoted provisions are clearly erroneous and are not supported by any evidence whatsoever, and, indeed, are contrary to the uncontradicted evidence.

7. Richfield moves to amend Finding 13 by striking therefrom the following portion thereof, to-wit:

> "The practical and intended purpose and effect of the minimum provision of the type of sales contract represented by plaintiff's exhibit 3B was to require the independent operator to purchase all of the petroleum products sold by the operator at the service station covered by the lease and sublease referred to in (1) and (2) herein from Richfield."

Said motion is made upon the ground that the same is clearly erroneous in that it is not supported by any evidence whatsoever and is contrary to the plain provisions of the Sales Contract and to the evidence.

8. Richfield moves to amend Finding 14 to set forth in accordance with the Stipulation of Facts (Def. Ex. A) and the uncontradicted evidence that the form of Sales Contract providing for the sale of the dealer's "requirements" of petroleum products was used with 3-C service station dealers only until August 1948, at which time Richfield discontinued such use on the advice of its legal counsel, promptly following the decision by Judge Yankwich in the case of *United States* v. *Standard Oil Company of California,* and in order to comply with the principle of law there announced; and that Richfield at such time negotiated for the modification of all such "requirements" contracts then in effect by the elimination therefrom of the [fol. 403] "requirements" clause and has succeeded in amending all of them with the exception of four.

Said motion is made upon the ground that without such amendment the Finding is clearly erroneous and contrary to the Stipulation of Facts.

9. Richfield moves to amend Finding 19 by striking therefrom the following sentence, to-wit:

> "The minimum quantities of gasoline, lubricating oils, and greases which the independent operator is required to purchase under the operator's sales contract (represented by plaintiff's exhibit 4C), are determined by Richfield and are usually fixed by it at 80 per cent of the anticipated requirements of the independent operator."

Said motion is made upon the ground that Finding 19 is clearly erroneous, the uncontradicted evidence being that Richfield salesmen were instructed that in the use of said form of Sales Contract they were to negotiate with the 3-C dealer for the quantity which the dealer desired to buy, subject to the qualification that the dealer was not to be permitted to obligate himself to buy a quantity in excess of eighty-five per cent (85%) (subsequently reduced to seventy-five per cent (75%)) of the dealer's past known purchases of petroleum products.

10. Richfield moves to amend Finding 19 by striking therefrom the following sentence, to-wit:

> "The practical and intended purpose and effect of this minimum-maximum provision is to require the independent 3-C operator to purchase from Richfield all of the petroleum products sold by him at his service station."

Said motion is made upon the ground that the same is [fol. 404] clearly erroneous in that it is not supported by any evidence whatsoever and is contrary to all of the evidence concerning both the purpose and effect of the quantity provision in said Sales Contract (Pl. Ex. 4-C).

11. Richfield moves to amend Finding 24 by striking therefrom the following portion thereof, to-wit:

> ". . . and the minimum requirement provisions contained in plaintiff's exhibits 5D and 5G were fixed and determined by Richfield, and the practical and intended purpose and effect of said provisions has been to require the 337 independent service station operator to secure his entire requirements of petroleum products from Richfield."

Said motion is made upon the ground that said portion of Finding 24 is clearly erroneous in that it is not supported by any evidence whatsoever and is contrary to the clear and uncontradicted evidence.

12. Richfield moves to amend Finding 26 by striking therefrom the following portion thereof, to-wit:

> "The obligation of the independent operator to pay for the cost of painting in the event the sales contract is terminated by him prior to the expiration of the term thereof was intended to and has had the effect of compelling the independent operator to purchase all of his requirements of petroleum products and automotive accessories from or through Richfield. The painting agreements and the oral agreements and understandings supplementing the same have had the intended effect of shutting out all competition for the petroleum products and automotive accessory business of the 377 independent service station operator."

[fol. 405] Said motion is made upon the ground that said portion of Finding 26 is clearly erroneous in that there is no evidence whatsoever in support thereof and, on the contrary, the uncontradicted evidence with respect to purpose or intent is: (Tr. 1759 et seq.)

(a) That Richfield's competitors offer to paint the stations of the potential customers, i. e., the 337 dealers, without cost and that Richfield must do the same in order to meet the competition of such competitors;

(b) That the 337 dealers demand the painting of their station without cost to them as a condition to purchasing any petroleum products from Richfield; and

(c) That under such circumstances, Richfield is willing to paint the service station of the 337 dealer without charge and without the right to collect for the cost of such painting, excepting in the limited circumstances specified in the Painting Agreement;

and the uncontradicted evidence with respect to the effect of the Painting Agreement is:

(a) That 75% of all 337 dealers handle, display and advertise non-Richfield lubricating oils and greases and also handle, display and advertise automotive accessories not approved or sponsored by Richfield (Tr. 1897); and

(b) That although the 337 dealers have not handled non-Richfield gasoline during the time they handled Richfield gasoline, nevertheless this fact resulted from the desire of the 337 dealers; and further, that 337 deal-[fol. 406] ers very often discontinued all purchases of Richfield gasoline from Richfield prior to the expiration of their 337 Sales Contract (Tr. 1773); and

(c) That during the period from January 1, 1946, to December 31, 1950, out of a total of 514 of such accounts lost, 407 (or approximately 80% thereof) were lost prior to the expiration of the Sales Contract and approximately 75% of such 407 accounts so lost in such manner had accompanying Painting Agreements. (Def. Ex. X)

13. Richfield moves to amend Finding 27 by striking therefrom the following portion, to wit:

> ". . . and each independent operator is an independent business man."

Said motion is made upon the ground that said portion of the Finding, in so far as it pertains to any of the L. O. operators, is clearly erroneous and is not supported by the evidence and is contrary thereto.

14. Richfield moves to amend Finding 28 by striking therefrom all references to the 3-C dealers, the 337 dealers and the 3-C and 337 stations.

Said motion is made upon the ground that Finding 28, in so far as it pertains to 3-C and 337 dealers and stations, is clearly erroneous and is not supported by the evidence and is contrary thereto.

15. Richfield moves to amend Finding 29 to limit the same to the 1343 L. O. stations.

Said motion is made upon the ground that without such limitation Finding 29 is clearly erroneous and is not supported by the evidence and is contrary thereto.

16. Richfield moves to amend Finding 32 to make the same conform to the Stipulation of Facts in so far as concerns the [fol. 407] reference to exhibits 4-A, 4-B, 4-C and 4-D.

Said motion is made upon the same ground as that contained in Richfield's motion number 8 hereinabove.

17. Richfield moves to amend Finding 39 to except and exclude therefrom any application of said Finding to the 3-C or 337 dealers and stations.

Said motion is made upon the ground that there is no evidence to support such Finding, except in so far as the same relates to L. O. stations, and that said Finding is contrary to the clear and uncontradicted evidence.

18. Richfield moves to amend the last sentence of Finding 45 to except and exclude therefrom any application of said Finding to the 3-C or 337 dealers and stations.

Said motion is made upon the ground that there is no evidence to support such Finding, except in so far as the same relates to L. O. stations, and that said Finding is contrary to the clear and uncontradicted evidence.

19. Richfield moves to amend Findings 46, 47 and 48 to

except and exclude therefrom any application of said Findings to the 3-C or 337 dealers and stations.

Said motion is made upon the ground that there is no evidence to support such Findings, except in so far as the same relate to L. O. stations, and that said Findings are contrary to the clear and uncontradicted evidence.

B. Richfield Moves That the Court Make the Following Additional Findings of Material Facts Re the L. O. Stations. Said Motion Is Made Upon the Ground That Each of the Following Additional Findings Is Supported by Uncontradicted Evidence and Is Material to the Issues Raised by the Pleadings:

1. Findings with respect to Richfield's business purpose in the acquisition and maintenance of the L. O. stations:

[fol. 408] (a) Richfield's business purpose and intent in the acquisition and maintenance of L. O. stations has been to provide a stable outlet for the petroleum products produced by it (Tr. 1687);

(b) The intense competition in Richfield's marketing area for the business of independent service station dealers who own or lease their respective service stations is such that, notwithstanding Richfield's constant solicitation of such business, Richfield cannot depend thereon as a stable outlet for the sale of its petroleum products (Tr. 1687-1689);

(c) Richfield's need for service station outlets has greatly increased since the termination of World War II due to the following factors (Tr. 1689-1692):

(i) During World War II Richfield's refinery capacity for the manufacture of motor gasoline was increased 32.5% (or the equivalent of 10,705 barrels of motor gasoline per day, or approximately 13,500,000 gallons per month) as the result of the installation by Richfield at the request of the United States Government of additional refinery facilities at an expenditure of approximately $20,000,000 (Def. Ex. AC, AE, AE-1, AE-2, AE-3 and AF);

(ii) Immediately following V-J Day in the fall of 1945, the United States Government reduced its pur-

chases of gasoline from Richfield from 17,000 barrels per day to 2,000 to 3,000 barrels per day (Tr. 2039); [fol. 409] (iii) Richfield discovered new oil fields (Tr. 1691);

(iv) There was a substantial increase in the demand for petroleum products due to vast increase in population on Pacific Coast (Tr. 1691 and Def. Ex. M-13);

(d) To satisfy such need for outlets for its production of petroleum products, Richfield during the period following 1946 acquired properties by lease and purchase, 90% of which were unimproved and vacant sites; and Richfield constructed service stations thereon. As of December 31, 1950, Richfield's investment in service station properties and improvements thereon was approximately $19,500,000 (Tr. 1692-1697, Def. Ex. AB);

(e) Notwithstanding such acquisition and investment, the number of Richfield's L. O. service stations has not increased during the past decade; and Richfield had fewer L. O. service stations as of December 31, 1950, than it had as of December 31, 1941 (Def. Ex. M-4, Tr. 1697);

(f) As of December 31, 1950, 1,092 L. O. stations, representing in excess of 81% of the total number of 1,343 L. O. stations owned or leased by Richfield, were self-created stations, i. e., stations built by Richfield or by the property owners under agreement with Richfield on sites which had never theretofore been used or equipped as service stations handling any petroleum products.

2. Findings with respect to Richfield's relationship with the L. O. operators:

(a) In selecting operators for its L. O. stations, Rich- [fol. 410] field made it a practice to investigate their character, reputation, family background and like qualities, and has interviewed various applicants and has required the use by them of application forms to secure such information (Tr. 1689-1699, Stip. of Facts, Def. Ex. A);

(b) Few, if any, of the L. O. operators had been independent dealers established in business in service stations owned or leased by them prior to becoming operators in Richfield's L. O. stations (Tr. 1698-1699);

(c) Prior to installation in one of Richfield's L. O. stations, the prospective operator is thoroughly instructed and informed of Richfield's requirements and practices concerning the following matters (Tr. 1920-1937):

(i) Richfield's requirement that operator and his helpers wear approved Richfield uniforms;

(ii) Richfield's requirement of a minimum crew of employees and helpers;

(iii) Richfield's requirement as to the hours the station is to remain open;

(iv) Richfield's requirement of the personal cleanliness and appearance of operator and his helpers;

(v) Richfield's requirement of use of specified pump island procedure and manner of dealing with public;

(vi) Richfield's requirement of the handling of Richfield products exclusively;

(vii) Richfield's requirement of the securing of [fol. 411] approved TBA from Richfield's local distributor if the latter is able to supply the operator;

(viii) Richfield's instructions as to how to order petroleum products;

(ix) Richfield's instructions concerning the procedure in use of Richfield's credit cards;

(x) Richfield's instructions against display of unapproved or competitive signs;

(xi) Richfield's instructions to operator to attend training meetings;

(xii) Richfield's practices whereby Richfield's merchandiser will from time to time, not less frequently than once every sixty days, inspect station and operator's maintenance and operating methods and instruct him on any matters determined to be corrected;

(xiii) Richfield's requirement that incoming

operator acquire from outgoing operator Richfield petroleum products, TBA items approved by Richfield and service station tools approved by Richfield and that incoming operator not acquire other items from outgoing operator.

(xiv) Richfield's practice and obligation in assisting operator in disposing of such approved items of petroleum products, TBA and equipment on termination of operator's tenure;

(xv) Richfield's practice and instructions that [fol. 412] operator does not acquire or develop any good will and shall not be permitted to charge for any intangible value to his successor on termination of his tenure;

(xvi) The existence and explanation of 24-hour termination clause in the Form 542 lease which is available to either party, and Richfield's reason for requiring the same as protection of its property, investment and merchandising program;

(d) Upon installation of L. O. operator, Richfield's merchandiser instructs him for a minimum of five days; and thereafter the merchandiser calls on the operator from two days a week to once a month, using an itemized form as a training guide; and every sixty days the merchandiser checks in detail on a printed form the compliance by the L. O. operator with the merchandiser's instructions (Tr. 1937-1939, Def. Exs. C and V);

(e) L. O. operators are at times promoted from one station to another or to the Company's Marketing Department (Tr. 99, 1364, 1937);

(f) It has been Richfield's practice that the following circumstances have warranted Richfield's terminating the tenure of an L. O. operator, i. e., insufficient crew, failure to maintain sufficient inventory, operation of a dirty station, failure to maintain sufficient operating hours, absentee operation or failure to carry Richfield products exclusively (Tr. 1943-1944);

(g) Richfield extends financial assistance to L. O. operators as follows:

[fol. 413] (i) Richfield subleases to L. O. operators fully equipped service stations (excepting only small tools and lubricating equipment) at a rental substantially less than the fair rental value thereof (Tr. 1704-1705, 1981-1982). As to stations leased rather than owned by Richfield, Richfield pays rentals to the property owners substantially in excess of those collected from the L. O. operators and in this respect absorbs a rental expense of approximately one-third of the total rentals paid (Def. Ex. AA);

(ii) Richfield has maintained a practice of reducing the L. O. operator's rentals whenever the operator has experienced difficulty in developing a satisfactory volume of business (Tr. 1699-1701);

(iii) Richfield subsidizes L. O. operators during "price wars" to the extent of their full margin of profit if they reduce prices to meet competition (Tr. 1708-1710; 1817; Def. Ex. F);

(iv) Richfield has made a practice of loaning money to L. O. operators so that they can carry adequate inventories of petroleum products (Tr. 1703 et seq.).

3. In light of the facts enumerated in proposed Findings 1 and 2 above, the L. O. operators are not independent businessmen (whether or not they be determined to be independent contractors); and the trade and custom of the L. O. operators is Richfield's trade and custom; and the L. O. operators do not constitute a legitimate market for Richfield's competitors.

4. If the business of the L. O. operators be validly deter-
[fol. 414] mined to be a legitimate market for Richfield's competitors, nevertheless restraints imposed by Richfield upon the petroleum products and automotive accessories handled by the L. O. operators in Richfield's L. O. stations are not unreasonable restraints of trade under §1 of the Sherman Act because of the following facts which are found to exist:

(a) Richfield does not have a position of dominating power in the petroleum products industry or in the

automotive accessories industry in the Western area (Def. Exs. M-4 to M-12, incl., and Def. Ex. Z);

(b) The Form 542 sublease used with each L. O. operator is not unreasonable in duration, being terminable by either party thereto on 24-hours' notice (Pl. Exs. 1-B, 1-D, 1-E and 1-G);

(c) The public interest has not been harmed or adversely affected (Def. Ex. M-13);

(d) The effect of Richfield's contracts with its L. O. operators has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products;

(e) In excess of 81% of the L. O. stations were self-created by Richfield (Def. Ex. W);

(f) Richfield's actions with respect to the acquisition and maintenance of L. O. stations and the leasing thereof to L. O. operators in the manner and upon the terms described in the foregoing Findings spring from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors.

5. If the business of the L. O. operators be validly determined to be a legitimate market for Richfield's competitors, [fol. 415] nevertheless for the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with its L. O. operators do not substantially lessen competition or tend to create a monopoly in any line of commerce under §3 of the Clayton Act.

6. If the business of the L. O. operators be validly determined to be a legitimate market for Richfield's competitors, nevertheless the business of said L. O. stations is not a substantial share of the line of commerce affected, as illustrated by the following facts:

(a) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 2.71% of the total quantity of gasoline manufactured by companies in the six states in the Western area (Def. Ex. Z);

(b) As of December 31, 1948, the number of Rich-

field L. O. stations constituted 3.28% of all service stations of all companies in the Western area (exclusive of Idaho) (Def. Ex. M-4);

(c) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 4.90% of the total volume of gasoline sold by all companies to all service stations in the Western area (exclusive of Idaho) (Def. Ex. M-5);

(d) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 3.18% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area (Def. Ex. F-5);

(e) During the calendar year 1950 Richfield's total sales of motor fuel, including sales to L. O., 3-C and 337 stations and all other taxable sales, constituted 7.3% of the total taxable motor fuel sales of all companies in the Western area (Def. Ex. M-7);

[fol. 416] (f) During the year 1947 Richfield's sales of lubricating oil to service stations of all types in the Western area constituted 2.39% of the total volume of lubricating oil sold by all companies in that area. (Def. Ex. M-10);

(g) During the year 1947 the volume of tires sold to L. O., 3-C and 337 stations by Richfield and by Richfield's TBA distributors constituted 1.02% of the total tires sold in the Western area (Def. Ex. M-11);

(h) During the year 1947 the volume of batteries sold to L. O., 3-C and 337 stations by Richfield and by Richfield's TBA distributors constituted 1.27% of the total batteries sold in the Western area (Def. Ex. M-12).

C. Richfield Moves that the Court Make the Following Additional Findings of Material Facts Re the 3-C and 337 Stations. Said Motion Is Made upon the Ground that Each of the Following Additional Findings Is Supported by Uncontradicted Evidence and Is Material to the Issues Raised by the Pleadings:

1. The Sales Contracts between Richfield and the 3-C and 337 dealers (excepting only those four Sales Contracts with

the 3-C dealers which contain a "requirements" provision) do not obligate or require the 3-C or 337 dealer to purchase all of his requirements of petroleum products from Richfield [fol. 417] (Stipulation of Facts, Def. Ex. A). The quantities which the 3-C and 337 dealers agreed in their respective Sales Contracts to purchase from Richfield were substantially less than the dealers' anticipated requirements of petroleum products as of the dates when the dealers signed their respective Sales Contracts.

Richfield had in effect as of February 28, 1951, a total of 1,640 Sales Contracts with 3-C and 337 dealers and the following Table segregates said contracts into four classes on the basis of the ratio which the quantity of gasoline that the dealer obligated himself to purchase under his Sales Contract bears to such dealer's average monthly purchases for the year preceding the date of the contracts. Column (1) specifies the ratio, column (2) specifies the number of contracts falling in each ratio group and column (3) specifies the percentage of total contracts in each ratio group.

(1) Contract Groups	(2) Number of Sales Contracts	(3) Percent Each Group Bears to Total Number of Sales Contracts
Group A—less than 75%	408	25%
Group B—75% to 79%, incl.	458	28%
Group C—80% to 89%, incl.	560	34%
Group D—90% and over	214	13%

(Def. Ex. Y)

2. Richfield did not execute a Painting Agreement with each 337 dealer. In a large percentage of instances no Painting Agreement was entered into at all with the 337 dealer with whom a Sales Contract was made. (See column 1 below.) In a large percentage of other instances a Sales Contract was made with the 337 dealer without any accompanying Painting Agreement, and subsequently a Painting Agreement was entered into at the time the dealer requested [fol. 418] that his station be painted. (See column 3 below.) Column 2 below represents the number of Sales Contracts which were accompanied by Painting Agreements made at the same time.

December 31st of	(1)	(2)	(3)
1938	109	349	98
1939	119	380	107
1940	121	385	109
1941	139	444	125
1942	93	298	84
1943	119	379	107
1944	123	394	112
1945	173	552	156
1946	205	656	185
1947	208	665	188
1948	223	712	201
1949	236	755	213
1950	267	853	241

(Def. Ex. L and Pl. Ex. 26-A, pp. 28-29)

3. During the period from January 1, 1946, to December 31, 1950, Richfield lost the business of 514 dealers who were purchasing petroleum products from Richfield under the provisions of Form 337 Sales Contracts. The following tabulation shows the number of such accounts lost at the expiration of the Sales Contracts and the number lost prior to the expiration of the Sales Contracts; and said tabulation also shows the number of accounts of each class which had Painting Agreements in existence and the number which had no such Painting Agreements in existence.

(See Table on following page.)

[fol. 419]

Number Lost at Expiration of Contract Painting Agreement in Existence at Time of Loss			Number Lost Prior to Expiration of Contract Painting Agreement in Existence at Time of Loss			Total Number Lost Painting Agreement in Existence at Time of Loss		
Yes	No	Total	Yes	No	Total	Yes	No	Total
81	26	107	303	104	407	384	130	514

(Def. Ex. X)

4. Richfield's contracts and agreements with the 3-C dealers and the 337 dealers are not unreasonable restraints of trade under §1 of the Sherman Act because of the following facts which are found to exist:

(a) The contracts provide for the purchase by the respective dealers of specified quantities of petroleum products and do not prevent or preclude any of such dealers from purchasing additional quantities of the

same products from any and all competitors of defendant;

(b) Not less than 75% of all of the 3-C and 337 dealers handle, openly advertise and display, and sell non-Richfield petroleum products and non-approved automotive accessories;

(c) Richfield does not have a position of dominating power in the petroleum products industry or in the automotive accessories industry in the Western area; (Def. Exs. M-4 to M-12, incl. and Def. Ex. Z)

(d) The 337 Sales Contract is not unreasonable in duration, being terminable by either party thereto on thirty days' written notice; (Pl. Exs. 5-D and 4-G)

(e) The public interest has not been harmed or adversely affected; (Def. Ex. M-13)

[fol. 420] (f) The effect of Richfield's contracts with the 337 dealers has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products;

(g) The effect of Richfield's contracts with the 3-C dealers has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products;

(h) Richfield's actions with respect to the 337 dealers and the 3-C dealers sprang from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors.

5. For the reason and upon the grounds stated in proposed Finding 4, Richfield's contracts with the 337 dealers do not substantially lessen competition or tend to create a monopoly in any line of commerce under Sec. 3 of the Clayton Act.

6. For the reasons and upon the grounds stated in proposed Finding 4, Richfield's contracts with the 3-C dealers do not substantially lessen competition or tend to create a monopoly in any line of commerce under Sec. 3 of the Clayton Act.

7. The number of contracts and the volume of business done by Richfield with 337 dealers is not a substantial share

of the line of commerce affected, as illustrated by the following facts:

(a) As of December 31, 1950, the volume of gasoline sold by Richfield to the 337 stations constituted 1.14% of the total quantity of gasoline manufactured by companies in the six states in the Western area (Def. Ex. Z);

(b) As of December 31, 1948, the number of 337 stations constituted 3.08% of all service stations of all [fol. 421] companies in the Western area (exclusive of Idaho) (Def. Ex. M-4);

(c) As of December 31, 1950, the volume of gasoline sold by Richfield to 337 stations constituted 2.03% of the total volume of gasoline sold by all companies to all service stations in the Western area (exclusive of Idaho) (Def. Ex. M-5);

(d) As of December 31, 1950, the volume of gasoline sold by Richfield to 337 stations constituted 1.33% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area (Def. Ex. M-5).

8. The number of contracts and the volume of business done by Richfield with 3-C dealers is not a substantial share of the line of commerce affected, as illustrated by the following facts:

(a) As of December 31, 1950, the volume of gasoline sold at the 3-C stations constituted .34% of the total quantity of gasoline manufactured by companies in the six states in the Western area (Def. Ex. Z);

(b) As of December 31, 1948, the number of 3-C stations constituted .70% of all service stations of all companies in the Western area (exclusive of Idaho) (Def. Ex. M-4);

(c) As of December 31, 1950, the volume of gasoline sold by Richfield to 3-C stations constituted .63% of the total volume of gasoline sold by all companies to all service stations in the Western area (exclusive of Idaho) (Def. Ex. M-5);

(d) As of December 31, 1950, the volume of gasoline [fol. 422] sold by Richfield to 3-C stations constituted

.40% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area (Def. Ex. M-5).

II

Conclusions of Law

1. Richfield moves to amend the Conclusions of Law numbers 1 to 4, inclusive, and 6 to 11, inclusive, to eliminate therefrom all references to oral contracts or agreements or understandings.

Said motion is made upon the ground that the evidence does not support any Finding or Conclusion concerning or based upon the existence of any oral contracts, agreements or understandings.

2. Richfield moves to amend the Conclusions of Law by striking therefrom paragraph 5 thereof upon the grounds:

(a) That the jurisdiction of this Court is based upon the Acts of Congress known as the Sherman and Clayton Anti-Trust Laws (see paragraph 1 of the complaint herein); and that any determination concerning the validity under state law or so-called federal law (other than said Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause contained in the L. O. lease form is beyond the jurisdiction or power of this Court;

(b) That there is and can be no issue in this cause concerning the validity under state law or so-called federal law (other than the Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause contained in the L. O. lease forms;

(c) That any reference therein contained to the [fol. 423] validity of the 24-hour termination clause under either state or federal law (other than the Sherman and Clayton Anti-Trust Laws) is erroneous and contrary to law.

III

Final Judgment

1. Richfield moves that the Final Judgment be amended by the elimination from paragraphs II, III, IV, V, and VII

of said Final Judgment of all references to oral contracts or agreements or understandings.

Said motion is made upon the ground that the evidence does not support any Finding or Conclusion or Judgment concerning or based upon the existence of any oral contracts, agreements or understandings.

2. Richfield moves to amend paragraph VI of the Final Judgment to eliminate therefrom the first sentence thereof which enjoins Richfield from exercising the 24-hour termination clause contained in any L. O. lease, and enjoins Richfield from cancelling any L. O. lease on less than thirty (30) days' notice.

Said motion is made upon the ground that such provision of the Final Judgment cannot be lawfully predicated or found upon any violation of either the Sherman or Clayton Anti-Trust Laws, but must be founded, if at all, upon an assumed violation of "state or federal law" as determined in Conclusion of Law number 5. Any determination concerning the validity under state law or so-called federal law (other than said Sherman and Clayton Anti-Trust Laws) of the 24-hour termination clause contained in the L. O. lease form is beyond the power and jurisdiction of this Court.

3. Richfield moves to amend paragraph VI of the Final Judgment to eliminate therefrom the second sentence thereof to the extent that it enjoins Richfield's cancellation [fol. 424] of any L. O. lease excepting "only for a breach of any of the written covenants contained in any written lease."

Said motion is made upon the grounds:

(a) The portion of the Final Judgment so complained of constitutes a taking of Richfield's property without compensation and without due process of law. It prevents Richfield from ever retaking possession of its property pursuant to its lawful contract rights. None of the L. O. leases contain any expiration date or fixed term, and accordingly none will automatically expire by its own terms unless terminated by either party thereto pursuant to the 24-hour termination clause contained in each L. O. lease. The portion of

the Final Judgment complained of in this motion will, in effect, require Richfield to continue to lease to the 1361 L. O. operators the respective stations occupied by them for an indefinite and unlimited time in the future and at a rental substantially less than the fair rental value of such stations; and

(b) The portion of the Final Judgment above complained of is unreasonable for the reasons above stated.

4. Richfield moves to amend the Final Judgment by the inclusion as a provision thereof of the following paragraph which was included and embodied in the Final Judgment by this Court in *United States* v. *Standard Oil Company of California*, No. 6159-Y, filed June 30, 1948, (78 Fed. Supp. 850, affirmed 337 U. S. 293, 93 L. ed. 1371), to wit:

"IX

Nothing contained in this judgment shall enjoin or restrain defendant from selling or contracting to sell petroleum products and/or automotive accessories including such products as are sponsored by defendant, [fol. 425] to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree, for the storage, handling or dispensing of such products."

Said motion is made upon the ground that throughout the trial of the above entitled cause, plaintiff has asserted, and in the Opinion in this cause filed July 2, 1951, this Court has determined, that the agreements involved in this case "are of the type condemned by the decision" in *United States* v. *Standard Oil Company of California* (supra). If such contention and determination be warranted or true, the Final Judgment in this cause should not be more onerous than the judgment of the same Court against Standard Oil Company of California; and the Final Judgment in this cause should not enjoin Richfield from engaging in any of

the important competitive marketing practices which Richfield's largest competitor, Standard Oil Company of California, is expressly permitted to engage in by the provision in the judgment in the Standard Oil case referred to above.

Dated: August 10, 1951.

Respectfully submitted, William J. DeMartini, Robert E. Paradise, by Robert E. Paradise, Attorneys for Defendant.

[fol. 426] Acknowledgment of service (omitted in printing).

[fol. 427] In United States District Court

[Title omitted]

Minute Entry—August 17, 1951

Nature of Proceedings: Hearing (1) motion of def't filed Aug. 10, 1951, for amendment to findings, conclusions, and judgment; (2) motion of def't filed Aug. 14, 1951, for retaxing costs; Counsel argue to Court.

Ruling: Ordered: each motion denied.

[fol. 428] [File endorsement omitted]

In United States District Court

[Title omitted]

Petition for Appeal—Filed September 4, 1951

Richfield Oil Corporation, defendant in the above entitled cause, considering itself aggrieved by the Final Judgment of this Court made and entered on August 2, 1951, does hereby pray that an appeal be allowed from said Final Judgment to the Supreme Court of the United States.

Pursuant to Rule 12 of the Revised Rules of the Supreme Court of the United States, as amended, defendant presents to this Court herewith a statement particularly disclosing

the basis upon which the Supreme Court has jurisdiction upon appeal to review the Final Judgment in this cause.

The particulars wherein defendant considers the judgment erroneous are set forth in the Assignment of Errors [fol. 429] and Prayer for Reversal accompanying this petition, and to which reference is hereby made.

Defendant prays that its appeal may be allowed to the Supreme Court of the United States and that citation be issued as provided by law, and that the amount of an appeal bond be fixed and said bond be approved, and that a transcript of the records, proceedings and documents upon which said Final Judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said court in such cases made and provided.

Dated: September 4, 1951.

William J. DeMartini, Robert E. Paradise, Attorneys for Defendant.

Krystal & Paradise, of Counsel.

[fols. 430-484] Bond on appeal for $1000 approved and Filed September 4, 1951, omitted in printing.

[fol. 485] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed September 4, 1951

Defendant, Richfield Oil Corporation (herein called "Richfield"), in connection with its Petition for Appeal to the Supreme Court of the United States, hereby assigns the following errors in the above entitled cause:

[fol. 486] I

Assignment of Errors Relating to Richfield's L. O. (Leased Out) Stations *

(1) The District Court erred in its determination that restrictions imposed by Richfield upon the operators of Richfield's L. O. stations are within the scope of and cognizable under § 1 of the Sherman Act and § 3 of the Clayton Act, notwithstanding a clear showing by the entire record that:

(a) The nature of Richfield's interest in the L. O. stations and the nature of Richfield's relationship with the L. O. operators is such that the trade and custom of the L. O. stations as operated by the L. O. operators is Richfield's trade and custom and is not the subject

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* The case involves three entirely separate and distinct types of service stations: (1) *L. O. stations* which are service stations owned by Richfield or leased by Richfield from a party other than the operator thereof, and thereafter leased by Richfield to an operator under a written lease agreement for an indefinite period of time, subject to termination by either Richfield or the L. O. operator on twenty-four (24) hours' notice. (2) *Dealer stations—337* which are owned by the 337 dealer or leased by him from a lessor other than Richfield. Richfield has entered into a written Sales Contract covering petroleum products with each of the 337 dealers; and in some instances has entered into written Painting Agreements with such dealers. (3) *Dealer stations 3-C* which are owned by the 3-C dealer or leased by him from a lessor other than Richfield. Here, in addition to a written Sales Contract with Richfield, the 3-C dealer has leased his station to Richfield and has taken a sublease back, both on Richfield's printed forms.

The distinction between the three types of service stations has been recognized in the pleadings and throughout the trial and in the Findings of Fact, Conclusions of Law and Final Judgment.

The Assignments of Error will be directed to: I—the L. O. stations and II—the Dealer stations (including both the 337 and 3-C stations).

matter of competition between Richfield and its competitors, and is not a legitimate market for Richfield's competitiors;

[fol. 487] (b) The nature of Richfield's relationship with the L. O. operators is analogous to the relationship of agency or the relationship of employment for the purposes of and within the scope of § 1 of the Sherman Act and § 3 of the Clayton Act; and

(c) The L. O. operators are not independent businessmen for the purposes of and within the scope of § 1 of the Sherman Act and § 3 of the Clayton Act.

(2) The District Court erred in its determinations that the agreements between Richfield and the L. O. operators are of the type condemned by the decision in *Standard Oil Company of California v. United States*, 337 U. S. 293; 93 L. Ed. 1371.

(3) The District Court erred in making the following Findings of Fact concerning the L. O. stations, which Findings are clearly erroneous in view of the entire evidence in the record:

(a) Finding 10 that the L. O. operator is solely responsible for his own acts and for those of his employees which may cause damage to the person or property of others;

(b) Finding 27 that each L. O. operator is an independent businessman; and

[fol. 488] (c) Finding 46 that Richfield's L. O. service stations represent a market for the manufacturers, producers and sellers of petroleum products and automotive accessories competitive to those sold or distributed by Richfield.

(4) The District Court erred in determining the following Conclusions of Law in so far as the same concern the L. O. stations:

(a) Conclusion 2 that the contracts, agreements and understandings between Richfield and the L. O. operators unreasonably restrain interstate commerce in violation of § 1 of the Sherman Act;

(b) Conclusion 3 that the contracts, agreements and

understandings between Richfield and the L. O. operators substantially lessen competition and tend to create a monopoly in violation of § 3 of the Clayton Act;

(c) Conclusion 5 that the 24-hour termination clause in the L. O. lease is invalid and against public policy and violates both state and federal law; and that the L. O. lease cannot be terminated by any notice by either side of less than one month;

(d) Conclusion 6 that the contracts, agreements and understandings between Richfield and the L. O. operators have the necessary and intended effect of foreclosing competition in the sale of petroleum products and automotive accessories from a substantial market for such products;

(e) Conclusion 7 that the contracts, agreements and understandings between Richfield and the L. O. operators unreasonably restrain and substantially lessen competition in an appreciable segment of interstate commerce;

(f) Conclusion 9 that the contracts, agreements and understandings between Richfield and the L. O. operators have the necessary and intended effect of deny-[fol. 489] ing manufacturers and suppliers of competitive products access to a substantial number of potential outlets for the sale of their products;

(g) Conclusion 10 that the number of L. O. stations and the volume of business in petroleum products and automotive accessories in such L. O. stations is substantial whether considered comparatively or not.

(5) The District Court erred in failing to make the following Findings of material facts with respect to Richfield's relationship with the L. O. operators, each of which Findings is supported by the uncontradicted evidence and is material to the issues raised by the pleadings:

(a) In selecting operators for its L. O. stations, Richfield has made it a practice to investigate their character, reputation, family background and like qualities, and has required the use by prospective operators of application forms to secure such information;

(b) Few, if any, of the L. O. operators had been independent dealers established in business in service stations owned or leased by them prior to becoming operators in Richfield's L. O. stations;

(c) Prior to installation in one of Richfield's L. O. stations, the prospective operator is thoroughly instructed and informed of Richfield's requirements and practices at its L. O. stations concerning the following matters:

(i) that the operator and his helpers wear approved Richfield uniforms;

(ii) that the station be manned by a minimum crew of helpers;

(iii) that the station remain open certain desig- [fol. 490] nated hours;

(iv) that the operator and his helpers maintain a standard of personal cleanliness and appearance;

(v) that the operator and his helpers maintain designated pump island procedure and a designated manner in dealing with the public;

(vi) that Richfield's petroleum products be handled exclusively;

(vii) that approved automotive accessories be secured from Richfield's local distributor if the latter is able to supply the operator;

(viii) that Richfield's instructions concerning the procedure in use of Richfield's credit cards be followed;

(ix) that the operator not display unapproved or competitive signs;

(x) that the operator attend training meetings;

(xi) that Richfield's merchandisers will periodically, not less frequently than once every sixty days, inspect the station and the operator's maintenance and operating methods and instruct him on any matters determined to be corrected;

(xii) that the incoming operator shall acquire from the outgoing operator the latter's stock of Richfield petroleum products, approved automotive accessories and service station tools approved by

Richfield; and that the incoming operator not acquire other items from the outgoing operator;

(xiii) that Richfield has an obligation to assist [fol. 491] the operator in disposing of such approved items of petroleum products, automotive accessories and equipment on termination of the operator's occupancy;

(xiv) that the operator does not acquire or develop any good will and shall not be permitted to make a charge for any intangible business value to a successor operator;

(d) Prior to installation, the prospective operator is informed of the existence of the 24-hour termination clause in the Form 542 lease which is available to either party, and of Richfield's reason for requiring the same as protection of its property, investment and merchandising program;

(e) Upon installation of an L. O. operator, Richfield's merchandiser instructs him for a minimum of five days, and thereafter the merchandiser calls on the operator from two days a week to once a month, using an itemized form as a training guide; and every sixty days the merchandizer checks in detail on a printed form the compliance by the L. O. operator with the merchandiser's instructions;

(f) L. O. operators are at times promoted from one L. O. station to another or to Richfield's Marketing Department;

(g) It has been Richfield's practice that the following circumstances have warranted Richfield's terminating the tenure of an L. O. operator: i. e., insufficient inventory, operation of a dirty station, failure to maintain sufficient operating hours, absentee operation or failure to carry Richfield products exclusively;

[fol. 492] (h) Richfield extends financial assistance to L. O. operators as follows:

(i) Richfield furnishes to the L. O. operators the instrumentalities for doing business, i.e., fully equipped service stations (excepting only small tools and lubricating equipment) at a rental substantially less than

the fair rental value thereof. Richfield pays to its lessors rentals substantially in excess of those collected from the L. O. operators and in this respect absorbs a rental expense of approximately one-third of the total rentals paid;

(ii) Richfield has maintained a practice of reducing the L. O. operator's rentals whenever the operator has experienced difficulty in developing a satisfactory volume of business;

(iii) Richfield subsidizes L. O. operators during "price wars" to the extent of their full margin of profit if they reduce prices to meet competition; and

(iv) Richfield has made a practice of loaning money to L. O. operators so that they can carry adequate inventories of petroleum products.

(6) The District Court erred in failing to make the following Findings of material facts with respect to Richfield's business purpose in the acquisition and maintenance of the L. O. stations, each of which Findings is supported by the uncontradicted evidence and is material to the issues raised by the pleadings:

(a) Richfield's business purpose and intent in the acquisition and maintenance of L. O. stations has been to provide a stable outlet for the petroleum products produced by it;

[fol. 493] (b) The intense competition in Richfield's marketing area for the business of independent service station dealers who own or lease their respective service stations is such that, notwithstanding Richfield's constant solicitation of such business, Richfield cannot depend thereon as a stable outlet for the sale of its petroleum products;

(c) Richfield's need for service station outlets has greatly increased since the termination of World War II due to the following factors:

(i) During World War II Richfield's refinery capacity for the manufacture of motor gasoline was increased 32.5% (or the equivalent of 10,705 barrels of motor gasoline per day, or approximately 13,500,000 gallons per month) as the result of the installation by Richfield, at the request of the United States govern-

ment, of additional refinery facilities at an expenditure of approximately $20,000,000.00;

(ii) Immediately following V-J Day in the fall of 1945, the United States government reduced its purchases of gasoline from Richfield from 17,000 barrels per day to 2,000 to 3,000 barrels per day;

(iii) Richfield discovered new oil fields; and

(iv) There was a substantial increase in demand for petroleum products due to vast increase in population on the Pacific Coast;

(d) To satisfy such need for outlets for its petroleum products, Richfield, during the period following 1946, acquired properties by lease and purchase, 90% of which were unimproved and vacant sites; and Richfield con- [fol. 494] structed service stations thereon. As of December 31, 1950, Richfield's investment in service station properties and improvements thereon was approximately $19,500,000.00;

(e) Notwithstanding such acquisition and investment, the number of Richfield's L. O. service stations has not increased during the past decade; and Richfield had fewer L. O. service stations as of December 31, 1950, than it had as of December 31, 1941;

(f) As of December 31, 1950, 1,092 L. O. stations, representing in excess of 81% of the total number of 1,343 stations owned or leased by Richfield, were self-created stations, i.e., stations built or caused to be built by Richfield on sites which had never theretofore been used or equipped as service stations handling any petroleum products.

(7) The District Court erred in failing to conclude and determine from the facts set forth in Assignments of Error 5 and 6 hereinabove that the L. O. operators are not independent businessmen (whether or not they be determined to be independent contractors; that the trade and custom of the L. O. stations as operated by the L. O. operators is Richfield's trade and custom; and that neither the L. O. stations nor the L. O. operators constitute a legitimate market for Richfield's competitors or the subject matter of competition.

(8) The District Court erred in failing to make the following additional Findings of material facts, each of which Findings is supported by the uncontradicted evidence and is material to the issues raised by the pleadings:

(a) The effect of Richfield's contracts with its L. O. operators has not been to unreasonably restrict the opportunity of Richfield's competitors to market their products;

[fol. 495] (b) The public interest has not been harmed or adversely affected by Richfield's contracts with its L. O. operators;

(c) Richfield's actions with respect to the acquisition and maintenance of L. O. stations and the leasing thereof to L. O. operators in the manner and upon the terms described in Assignments of Error 5 and 6 above sprang from business requirements and not from any purpose or intention of Richfield to monopolize trade or commerce or to suppress or otherwise affect competition or its competitors;

(d) The Form 542 sublease used with each L. O. operator is not unreasonable in duration, being terminable by either party thereto on 24-hours notice;

(e) Richfield does not have a position of dominating power in the petroleum products industry or in the automotive accessories industry in the Western area;

(f) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 2.71% of the total quantity of gasoline manufactured in the six states in the Western area;

(g) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 4.90% of the total volume of gasoline sold by all companies to all service stations in the Western area;

(h) As of December 31, 1950, the volume of gasoline sold at the L. O. stations constituted 3.18% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area;

(i) As of December 31, 1948, the number of Richfield L. O. stations constituted 3.28% of all service stations in the Western area;

[fol. 496] (j) During the year 1947 Richfield's sales of

lubricating oil to service stations of all types in the Western area constituted 2.39% of the total volume of lubricating oil sold by all companies in that area;

(k) During the year 1947 the volume of tires sold to L. O., 337 and 3-C stations by Richfield and by Richfield's TBA distributors constituted 1.02% of the total tires sold in the Western area;

(l) During the year 1947 the volume of batteries sold to L. O., 337 and 3-C stations by Richfield and by Richfield's TBA distributors constituted 1.27% of the total batteries sold in the Western area.

(9) The District Court erred in failing to conclude and determine from the facts set forth in Assignments of Error 5, 6 and 8 hereinabove that even if the L. O. stations were validly determined to be a legitimate market for Richfield's competitors, and if the relationship between Richfield and the L. O. operators was not such as to exempt and exclude the same from the scope and effect of § 1 of the Sherman Act and § 3 of the Clayton Act, nevertheless restraints imposed by Richfield upon the petroleum products and automotive accessories handled by the L. O. operators in Richfield's L. O. stations are not unreasonable restraints of trade under § 1 of the Sherman Act and do not substantially lessen competition or tend to create a monopoly in any line of commerce under § 3 of the Clayton Act.

(10) The District Court erred in failing to conclude and determine from the facts set forth in Assignments of Error 5, 6 and 8 hereinabove that even if the L. O. stations were validly determined to be a legitimate market for Richfield's competitors, and if the relationship between Richfield and the L. O. operators was not such as to exempt and exclude the same from the scope and effect of § 3 of the Clayton Act, nevertheless the business of said L. O. sta- [fol. 497] tions is not a substantial share of the line of commerce affected.

(11) The District Court erred in its Final Judgment in:

(a) adjudging Richfield's contracts, agreements and understandings with its L. O. operators to be in violation of § 1 of the Sherman Act and § 3 of the Clayton Act;

(b) enjoining Richfield from entering into any contract, agreement or understanding with any L. O. operator which has the purpose or effect of requiring the L. O. operator to secure all of his requirements of petroleum products or automotive accessories from or through Richfield;

(c) enjoining Richfield from exercising the 24-hour termination clause in any lease pertaining to an L. O. station or cancelling any such lease on less than thirty (30) days' written notice to any L. O. operator; and

(d) enjoining Richfield from cencelling any L. O. lease excepting only for a breach of any of the written covenants contained in any written L. O. lease.

(12) The District Court erred in its Order made and entered on August 17, 1951, denying Richfield's Motion under Rule 52 of the Federal Rules of Civil Procedure, and particularly the following portion thereof:

"4. Richfield moves to amend the Final Judgment by the inclusion as a provision thereof of the following paragraph which was included and embodied in the Final Judgment by this Court in *United States* v. *Standard Oil Company of California*, No. 6159-Y, filed June 30, 1948, (78 Fed. Supp. 850, affirmed 337 U. S. 293, 93 L. Ed. 1371), to wit:

[fol. 498] 'IX

Nothing contained in this judgment shall enjoin or restrain defendant from selling or contracting to sell petroleum products and/or automotive accessories including such products as are sponsored by defendant, to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree, for the storage, handling, or dispensing of such products.'

Said motion is made upon the ground that throughout the trial of the above entitled cause, plaintiff has asserted, and in the Opinion in this cause filed July 2, 1951, this Court

has determined, that the agreements involved in this case 'are of the type condemned by the decision' in *United States v. Standard Oil Company of California* (supra). If such contention and determination be warranted or true, the Final Judgment in this cause should not be more onerous than the judgment of the same Court against Standard Oil Company of California; and the Final Judgment in this cause should not enjoin Richfield from engaging in any of the important competitive marketing practices which Richfield's largest competitor, Standard Oil Company of California, is expressly permitted to engage in by the provision in the judgment in the Standard Oil case referred to above."

[fol. 499] II

Assignment of Errors Relating to Dealer Stations (i.e., the 337 and 3-C Stations)*

(1) The District Court erred in making the following Findings of Fact concerning the Dealer stations, which Findings are clearly erroneous in view of the entire evidence in the record:

(a) Findings 5, 20, 21, 26, 27, 28, 30, 33, 34, 39, 43, 45, 46, 47 and 48 in so far as the same determine the existence of any oral contract, agreement or understanding between Richfield and any one or more of the 337 type of service sta-

* The Dealer stations, both 337 and 3-C, when treated as a class, are distinguishable from the L. O. stations in that Richfield acknowledges that the former are owned and operated by independent businessmen and are the subject matter of competition. Although the 337 and 3-C stations are treated collectively in these Assignments of Error for the purpose of distinguishing them from the L. O. stations, nevertheless Richfield's contracts pertaining to the 337 stations differ substantially from those pertaining to the 3-C stations with the results both that evidence as to each of such types of station must be weighed separately and independently and that Findings pertaining to Richfield's contracts with either of such types of station may not be supported by evidence relating to Richfield's contracts with the other type.

tion dealers who operate any of the 1,361 stations of that type, or between Richfield and any one or more of the 3-C type of service station dealers who operate any of the 261 stations of that type.

(b) Finding 5 in so far as the same determines that a written Sales Contract and a written Painting Agreement are made with each 337 service station dealer;

[fol. 500] (c) Findings 13, 19 and 24 in so far as the same determine that the practical or intended purpose or effect of the fixed quantity or minimum-maximum provision of the written Sales Contracts therein described were to require the 337 service station dealer or the 3-C service station dealer to secure his entire requirements of petroleum products from Richfield;

(d) Finding 25 in so far as the same determines that the provisions of the Painting Agreement gave Richfield the right to control the placing or removal of advertising signs, trade marks or other insignia on the premises of the 337 dealer;

(e) Finding 26 in so far as the same determines that the intended effect of the Painting Agreement is to secure an exclusive Richfield outlet; that the obligation of the 337 dealer under any written Painting Agreement was intended to or had the effect of compelling the dealer to purchase all of his requirements of petroleum products or automotive accessories from or through Richfield; and that the Painting Agreement had the intended effect of shutting out all competition for the business of the 337 dealer;

(f) Finding 28 in so far as the same determines that any of the matters therein described have affected or have been applicable to any 337 or 3-C dealer station at any time within the period of ten years prior to the time of trial;

(g) Finding 29 in so far as the same determines that Richfield inspects, polices or supervises the activity or sales of any 337 or 3-C dealer;

(h) Finding 39 in so far as the same determines that Richfield's contracts or agreements with 337 or 3-C dealers [fol. 501] prevent such dealers from dealing with competitive suppliers or directly affect the shipment of competitive goods originating in interstate sources;

(i) Finding 45 in so far as the same determines that

manufacturers or producers of petroleum products or automotive accessories have unsuccessfully attempted to sell their products to the 337 or 3-C dealers;

(j) Finding 46, in so far as the same determines that manufacturers, producers, distributors and sellers of products competitive to those sold or distributed by Richfield have been unable to sell their products to the 337 or 3-C dealers or to increase their sales or compete for the market represented by either the 337 dealers or the 3-C dealers; and that the agreements and understandings between Richfield and the 337 and 3-C dealers have denied access by such competitors to such service stations;

(k) Finding 47 in so far as the same determines that the intended purpose or effect of any of the agreements or understandings has been to prevent the 337 or 3-C dealers from handling any petroleum products or automotive accessories other than those manufactured, sold, supplied or sponsored by Richfield; that 337 and 3-C dealers did not openly handle competitive products nor display signs advertising the same; that the 337 and 3-C dealers have been denied access to competitive products and have been prevented from purchasing petroleum products or automotive accessories in an open and competitive market; and that the agreements and understandings were intended to and in practice do confine the 337 and 3-C dealers to the petroleum products and automotive accessories handled or sponsored by Richfield;

(l) Finding 48 in so far as the same determines that the [fol. 502] agreements between Richfield and the 337 and 3-C dealers have denied the dealers the right to buy competitive products and have denied manufacturers of competitive products the right to sell to such 337 and 3-C dealers.

(2) The District Court erred in determining the following Conclusions of Law with respect to the Dealer stations:

(a) Conclusions 1 to 4, inclusive, and 6 to 11, inclusive, in so far as said Conclusions are based upon a determination of the existence of any oral contracts, agreements or understandings between Richfield and any one or more of the 337 type of service station dealers who operate any of the 1,361 stations of that type, or between Richfield and any one or

more of the 3-C type of service station dealers who operate any of the 261 stations of that type;

(b) Conclusion 2 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers unreasonably restrain the course of interstate commerce in petroleum products or automotive accessories in violation of § 1 of the Sherman Act;

(c) Conclusion 3 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers substantially lessen competition or tend to create a monopoly in the sale or distribution of petroleum products or automotive accessories in violation of § 3 of the Clayton Act;

(d) Conclusion 6 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers had the necessary or intended effect of foreclosing [fol. 503] competition in the sale of petroleum products or automotive accessories from a substantial market for such products in the six states of the Western area;

(e) Conclusion 7 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers unreasonably restrain or substantially lessen competition in an appreciable segment of interstate commerce;

(f) Conclusion 8 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C dealers have the necessary or intended effect of denying the 337 or 3-C dealers access to products competitive to those manufactured, handled or sponsored by Richfield or of locking out such dealers from the sources of such products originating in interstate commerce, or have the effect of confining the 337 or 3-C dealers to the handling of or dealing in petroleum products or automotive accessories manufactured, handled or sponsored by Richfield;

(g) Conclusion 9 in so far as the same determines that the contracts, agreements or understandings between Richfield and the 337 dealers and between Richfield and the 3-C

dealers have the necessary or intended effect of denying manufacturers or suppliers of petroleum products or automotive accessories competitive to those manufactured or sponsored by Richfield access to a substantial number of potential outlets for the sale of their products;

(h) Conclusion 10 in so far as the same determines that the number of outlets and the volume of business in petroleum products and automotive accessories foreclosed to competition by the contracts or agreements between Rich- [fol. 504] field and the 337 dealers and between Richfield and the 3-C dealers is substantial, whether considered comparatively or not;

(i) Conclusion 11 in so far as the same determines that the provisions of the contracts or agreements between Richfield and the 337 dealers and between Richfield and the 3-C dealers are illegal in their effect or that the plaintiff is entitled to an injunction with regard thereto.

(3) The District Court erred in failing to make the following Findings of material facts with respect to the Dealer stations, each of which Findings is supported by the uncontradicted evidence and is material to the issues raised by the pleadings:

(a) The Sales Contracts between Richfield and the 337 dealers and between Richfield and the 3-C dealers (excepting only those four Sales Contracts with the 3-C dealers which contain a "requirements" provision) do not obligate or require any 337 or 3-C dealer to purchase all of his requirements of petroleum products from Richfield and do not prevent or preclude any such dealers from purchasing additional quantities of the same products from any and all competitors of Richfield. The quantities which the 337 and 3-C dealers agreed in their respective Sales Contracts to purchase from Richfield were substantially less than the dealers' anticipated requirements of petroleum products as of the dates when the dealers signed their respective Sales Contracts.

Richfield had in effect as of February 28, 1951, a total of 1,640 Sales Contracts with 337 and 3-C dealers and the following Table segregates said contracts into four groups on

the basis of the ratio which the quantity of gasoline that the dealer obligated himself to purchase under his Sales Contract bears to such dealer's average monthly purchases for [fol. 505] the year preceding the date of the contracts. Column (1) specifies the ratio, column (2) specifies the number of contracts falling into each ratio group and column (3) specifies the percentage of total contracts in each ratio group.

(1) Contract Groups	(2) Number of Sales Contracts	(3) Percent Each Group Bears to Total Number of Sales Contracts
Group A—less than 75%	408	25%
Group B—75% to 79%, incl.	458	28%
Group C—80% to 89%, incl.	560	34%
Group D—90% and over	214	13%

(b) Richfield has not executed a Painting Agreement with each 337 dealer. In a large percentage of instances no Painting Agreement was entered into with the 337 dealer with whom a Sales Contract was made. (See column (1) below). In a large percentage of other instances a Sales Contract was made with the 337 dealer without any accompanying Painting Agreement, and subsequently a Painting Agreement was entered into at the time the dealer requested that his station be painted. (See column (3) below). Column (2) below represents the number of Sales Contracts which were accompanied by Painting Agreements made at the same time as the respective Sales Contracts.

[fol. 506]

December 31st of	(1)	(2)	(3)
1938	109	349	98
1939	119	380	107
1940	121	385	109
1941	139	444	125
1942	93	298	84
1943	119	379	107
1944	123	394	112
1945	173	552	156
1946	205	656	185
1947	208	665	188
1948	223	712	201
1949	236	755	213
1950	267	853	241

(c) During the period from January 1, 1946 to December 31, 1950, Richfield lost the business of 514 dealers who were purchasing petroleum products from Richfield under the

provisions of Form 337 Sales Contracts. The following tabulation shows the number of such accounts lost at the expiration of the Sales Contracts and the number lost prior to the expiration of the Sales Contracts; and said tabulation also shows the number of accounts lost in each class which had Painting Agreements in existence and the number which had no such Painting Agreements in Existence.

Number Lost at Expiration of Contract			Number Lost Prior to Expiration of Contract			Total Number Lost		
Painting Agreement in Existence at Time of Loss			Painting Agreement in Existence at Time of Loss			Painting Agreement in Existence at Time of Loss		
Yes	No	Total	Yes	No	Total	Yes	No	Total
81	26	107	303	104	407	384	130	514

[fol. 507] (d) Not less than 75% of all of the 337 and 3-C dealers handle, openly advertise and display, and sell non-Richfield petroleum products and non-approved automotive accessories;

(e) The effect of Richfield's contracts with the 337 dealers or with the 3-C dealers has not been to restrict unreasonably the opportunity of Richfield's competitors to market their products;

(f) The public interest has not been harmed or adversely affected by Richfield's contracts with the 337 dealers or with the 3-C dealers;

(g) The 337 Sales Contract is not unreasonable in duration, being terminable by either party thereto on thirty days' written notice;

(h) Richfield does not have a position of dominating power in the petroleum products industry nor in the automotive accessories industry in the Western area;

(i) As of December 31, 1950, the volume of gasoline sold by Richfield to the 337 dealers constituted 1.14% of the total quantity of gasoline manufactured in the six states in the Western area;

(j) As of December 31, 1950, the volume of gasoline sold by Richfield to the 337 stations constituted 2.03% of the total volume of gasoline sold by all companies to all service stations in the Western area;

(k) As of December 31, 1950, the volume of gasoline sold by Richfield to the 337 stations constituted 1.33% of the

volume of taxable sales of motor vehicle fuel by all companies in the Western area;

(l) As of December 31, 1948, the number of 337 stations constituted 3.08% of all service stations of all companies in the Western area;

[fol. 508] (m) As of December 31, 1950, the volume of gasoline sold at the 3-C stations constituted .34% of the total quantity of gasoline manufactured in the six states in the Western area;

(n) As of December 31, 1950, the volume of gasoline sold by Richfield to the 3-C stations constituted .63% of the total volume of gasoline sold by all companies to all service stations in the Western area;

(o) As of December 31, 1950, the volume of gasoline sold by Richfield to 3-C stations constituted .40% of the volume of taxable sales of motor vehicle fuel by all companies in the Western area;

(p) As of December 31, 1948, the number of 3-C stations constituted .70% of all service stations of all companies in the Western area.

(4) The District Court erred in failing to conclude and determine from the facts set forth in Assignment of Error 3 hereinabove that the contracts, agreements and understandings between Richfield and the 337 and 3-C dealers are not unreasonable restraints of trade under §1 of the Sherman Act, and do not substantially lessen competition or tend to create a monopoly in any line of commerce under §3 of the Clayton Act.

(5) The District Court erred in failing to conclude and determine from the facts set forth in Assignment of Error 3 hereinabove that the business of the 337 stations or the 3-C stations is not a substantial share of the line of commerce affected.

(6) The District Court erred in the Final Judgment in determining:

(a) that Richfield has entered into any oral contracts, agreements or understandings with any one or more of the 337 type of service station dealers who operate any one of the 1,361 stations of that type, or with any one or more of the [fol. 509] 3-C type of service station dealers who operate any of the 261 stations of that type;

(b) that Richfield's contracts, agreements and understandings with the 337 dealers violate §1 of the Sherman Act and §3 of the Clayton Act;

(c) that Richfield's contracts, agreements and understandings with the 3-C dealers violate §1 of the Sherman Act and §3 of the Clayton Act.

Prayer for Reversal

For which Errors defendant and appellant, Richfield Oil Corporation, prays that the Final Judgment of the District Court made and entered on August 2, 1951, in the above entitled action be reversed and a judgment be rendered in favor of the said defendant and appellant.

Dated: September 4, 1951.

William J. DeMartini, Robert E. Paradise, Attorneys for Defendant and Appellant.

Krystal and Paradise, of Counsel.

[fols. 510-511] Statement Calling Attention to the Provisions of Supreme Court Rule 12(3) (omitted in printing).

[fol. 512] [File endorsement omitted]

In United States District Court

[Title omitted]

Order Allowing Appeal—Filed September 4, 1951

Richfield Oil Corporation, the defendant in the above cause, having made and filed its petition for the allowance of an appeal to the Supreme Court of the United States, from the final judgment made and entered in said cause by the District Court of the United States, for the Southern District of California, on the 2nd day of August, 1951, and having also made and filed its assignment of errors, prayer for reversal and statement as to jurisdiction pursuant to statutes and to the rules of the Supreme Court of the United States in such cases made and provided,

It is now ordered that an appeal be and the same is hereby allowed in the above cause, as provided by law, from the

District Court of the United States for the Southern Dis-
[fol. 513] trict of California, to the Supreme Court of the United States; and

It is further ordered that a citation shall issue as provided by law; that defendant shall give a bond on appeal for costs in the sum of $1000.00, and that a transcript of the records, proceedings and documents upon which final judgment herein was based, duly authenticated, shall be sent to the Supreme Court of the United States under and pursuant to the rules of said Court in such cases made and provided.

Dated: Sept. 4, 1951.

Ben Harrison, United States District Judge.

[fols. 514-517] PRAECIPE INDICATING THE PORTIONS OF THE RECORD TO BE INCORPORATED IN THE TRANSCRIPT ON APPEAL (Omitted in printing)

[fol. 518] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION DESIGNATING PORTIONS OF THE RECORD TO BE INCLUDED IN THE TRANSCRIPT ON APPEAL (PURSUANT TO SUPREME COURT RULE 10)—Filed September 4, 1951

Pursuant to Rule 10 of the Revised Rules of the Supreme Court of the United States, as amended, counsel for plaintiff and defendant, by this written stipulation filed with the Clerk of the above entitled Court, stipulate that the following portions of the record shall be included in the transcript, and request said Clerk to prepare and transmit all of the same as the record in the above entitled cause upon defendant's appeal to the Supreme Court of the United States:

[fol. 519] 1. Complaint, dated April 30, 1947.

2. Answer to Complaint, dated November 2, 1948.

3. Stipulation dated June 23, 1950, for Amendment to Answer, and Order thereon dated June 26, 1950.

4. Amendment to Answer to Complaint, dated June 26, 1950.

5. Request for Admission Under Rule 36, dated October 13, 1950, including attachments.

6. Opinion of the Court, dated July 2, 1951.

7. Decision and Order of the Court, dated July 2, 1951.

8. Objection of Defendant to Findings of Fact, Conclusions of Law and Final Judgment proposed by Plaintiff, lodged on July 27, 1951 and filed on August 2, 1951, together with the notation thereon made by the Court.

9. Findings of Fact and Conclusions of Law, dated August 2, 1951.

10. Final Judgment, dated August 2, 1951.

11. Notice of and Motion for Amendment to Findings of Fact, Conclusions of Law and Final Judgment, dated August 17, 1951.

12. Order Denying Motion for Amendment to Findings of Fact, Conclusions of Law and Final Judgment, dated August 17, 1951.

13. Petition for Appeal, dated September 4, 1951.

14. Citation, dated September 4, 1951.

15. Statement as to Jurisdiction, dated September 4, 1951 (omitting therefrom copy of the Opinion of July 2, 1951, but showing by an appropriate note appended thereto that said copy was annexed to the original).

16. Statement Calling Attention to the Provisions of Supreme Court Rule 12(3), dated September 4, 1951.

17. Order Allowing Appeal, dated September 4, 1951.

[fol. 520] 18. Assignment of Errors and Prayer for Reversal dated September 4, 1951.

19. Proof of Service, dated September 4, 1951.

20. Bond on Appeal, dated September 4, 1951.

21. Stipulation Designating Portions of the Record to be included in the Transcript on Appeal (Pursuant to Supreme Court Rule 10), dated September 4, 1951.

22. Praecipe Indicating the Portions of the Record to be Incorporated in the Transcript on Appeal, dated September 4, 1951.

23. The Reporter's Transcript of Proceedings at the

Trial of the above entitled cause, being a record of the proceedings before the above entitled Court on May 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 29, 31, June 5, 6, and August 1, 1951.

24. The following exhibits received in evidence at the trial:

Plaintiff's Exhibits

1 to 1-G, inclusive, 2 to 3-D, inclusive, 4 to 4-D, inclusive, 5 to 5-I, inclusive, 6 to 6-F, inclusive, 7 (white copy only) to 9-A, inclusive, 10 to 10-E, inclusive, 11 to 13, inclusive, 16, 17-D, 17-E, 18-D, 18-E, 20-A, 21 to 21-B, inclusive, 22-G, 23-A, 25, 26-A, 27 to 28-A, inclusive, 29 and 30, (being all exhibits offered by plaintiff which were received in evidence except those exhibits which are referred to in Section I of the Condensed Statement annexed hereto).

Defendant's Exhibits

The following portion of Exhibit A: pages 1 to 7, inclusive, and the following forms attached thereto: Dealer Franchise Application, Application for Prospective Sub-[fol. 521] lessees, Application for Service Station Sub-Lease, Dealer Application, Application for Employment and Form 901, Application for Employment, (and specifically excluding the remaining portion of said Exhibit A), C to G, inclusive, H-3, J to L, inclusive, M-1 to M-13, inclusive, N to N-4, inclusive, O, O-1, P, Q to Z, inclusive, AA to AD, inclusive, AF and AG, (being all exhibits offered by defendants which were received in evidence, except those exhibits and the portions of Exhibit A which are referred to in Section II of the Condensed Statement annexed hereto.)

It is further stipulated that the exhibits referred to in paragraph 24 above were all of the exhibits received in evidence by the above entitled Court upon the trial of this cause, with the exception of certain exhibits offered by plaintiff and defendant and received in evidence upon said trial, which are referred to in the Condensed Statement annexed hereto; that said Condensed Statement adequately states for all purposes the contents of the exhibits last referred to; and that said Condensed Statement and this

Stipulation with reference thereto are made for the purpose of avoiding unnecessary repetition and omitting irrelevant matter.

It is further stipulated that said Reporter's Transcript of Proceedings at the trial, referred to in paragraph 23 herein, and the exhibits referred to in paragraph 24 herein, and the Condensed Statement annexed hereto, comprise a complete record of all proceedings taken and all evidence [fol. 522] received upon the trial of the above entitled cause.

Dated: September 4, 1951.

William C. Dixon, Special Assistant to the Attorney General, Theodore M. Alexander, T. Keister Greer, Theron M. Hall, Lawrence M. Somerville, Special Attorneys, Anti-Trust Division, Department of Justice, Attorneys for Plaintiff, By William C. Dixon.

William J. DeMartini, Robert E. Paradise, Attorneys for Defendant.

Krystal & Paradise, of Counsel.

[fol. 523] CONDENSED STATEMENT WITH RESPECT TO CERTAIN EXHIBITS OFFERED BY PLAINTIFF AND BY DEFENDANT AND RECEIVED IN EVIDENCE

[fol. 524] Section I—Plaintiff's Exhibits

All references in this Section are to plaintiff's exhibits.

Exhibit 14. This exhibit comprises the following:

Printed form 362, Service Station Lease 3-C, print of 11-46, which is plaintiff's *Exhibit 4*, with the exception that this instrument is executed on June 24, 1948, by and between William Strable and Angeline Strable, his wife, as Lessors, and Richfield Oil Corporation, as Lessee, for the period from June 1, 1948 to May 31, 1958, with the agreement and understanding that Lessee shall be privileged to terminate this lease as of the 31st day of May, 1953, by means of a prior 30 day notice in writing to Lessor. This

lease covers property on Highway 91 in the City of Arden, County of Clark, State of Nevada. The agreed rental is ½¢ per gallon for each gallon of gasoline, irrespective grade, delivered to the premises described in the lease by Lessee with a minimum rental of $10.00 per month.

Exhibit 14-A. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 6-46, which is like plaintiff's *Exhibit 4-A*, except that it is an instrument executed on June 24, 1948, by and between Richfield Oil Corporation, as Lessor, and William Strable, as Lessee, covering premises on Highway 91 in the City of Arden, County of Clark, State of Nevada, for the term commencing on June 1, 1948 and ending on May 30, 1958, unless the lease shall be sooner terminated in the manner provided therein. The lease contains provision for a rental of ½¢ per gallon of gasoline delivered to the premises with [fol. 525] a minimum of $10.00 per month.

Exhibit 14-B. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 12-47, which is like plaintiff's *Exhibit 4-B*, except that it is an instrument executed on June 24, 1948, by and between Richfield Oil Corporation, as Seller, and William Strable, as Buyer, for the period commencing June 1, 1948 and ending May 30, 1958. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	5,500 gallons
Lubricating oils	55 gallons
Greases	.... pounds

The contract also includes the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 14-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D,* except that it is an instrument executed on October 15, 1948, by and between Richfield Oil Corporation, as Lessor, and William Strable, as Lessee, for the period commencing November 1, 1948, and ending May 30, 1958, unless it be sooner terminated in the manner provided for therein. The lease contains provision for a rental of ½¢ per gallon of gasoline delivered to the premises with a minimum of $10.00 per month.

[fol. 526] *Exhibit 14-D.* This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C,* except that it is an instrument executed on October 15, 1948, by and between Richfield Oil Corporation, as Seller, and William Strable, as Buyer, designating Buyer's service station located on Highway 91 and Arden Road, City of Arden, State of Nevada. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	4,609 gallons	5,761 gallons
Lubricating oils	46 gallons	58 gallons
Greases	.... pounds	.... pounds

The contract also contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 15. This exhibit comprises the following:

Printed form 542, Service Station Lease, print date of 11-44, which is like plaintiff's *Exhibit 1-G,* except that this instrument is executed on July 20, 1945, by and between Richfield Oil Corporation, as Lessor, and J. W. Hurst, as Lessee, covering service station located at 1237 SE Haw-

thorne Blvd., Portland, Oregon. The period of the lease commences on July 20, 1945. The lease provides for rental equal to $55.00 per month, plus 1¢ per gallon for each gallon of gasoline delivered to the premises in excess of 5,500 gallons in each calendar month. Paragraph 11 of the [fol. 527] lease makes reference to the fact that it is understood that the instrument is subordinate and subject to all terms, provisions and conditions contained in a certain lease dated March 23, 1936, by and between The United States National Bank of Portland, Oregon, as Lessor, and William C. McDuffie, as Receiver for Richfield Oil Company of California, as Lessee.

Exhibit 15-A. This exhibit comprises the following:

Printed form 542, Service Station Lease, print date of 11-44, which is like plaintiff's *Exhibit 1-G*, except that this instrument is executed on March 24, 1946, by and between Richfield Oil Corporation, as Lessor, and J. W. Hurst, as Lessee, covering service station property located at 1237 SE Hawthorne Blvd., Portland, Oregon. The period of the lease commences on March 24, 1946. The lease provides for rental equal to $55.00 per month plus 1¢ per gallon for each gallon of gasoline delivered to the premises in excess of 5,500 gallons in each calendar month. Paragraph 11 of the lease makes reference to the fact that it is understood that the instrument is subordinate and subject to all terms provisions and conditions contained in that certain lease dated March 27, 1946, by and between The United States National Bank of Portland, Oregon, as Lessor, and Richfield Oil Corporation, as Lessee, and from which paragraph the following words have been stricken "(to whose interest Lessor herein has succeeded)".

Exhibit 17. This Exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4-B*, except that this instrument is executed on August 2, 1946, by and between Richfield Oil Corporation, as Seller, and D. W. [fol. 528] Colmery and Helene P. Colmery, husband and wife, as Buyers, for a period of twenty years, less one day. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	5,000 gallons
Lubricating oils	50 gallons
Greases	50 pounds

The contract contains reference to Buyer's service station at Las Tunas Drive and Live Oak Avenue, Arcadia, California, (known as the "Kalliwoda" station) and also contains the following inserted paragraph:

> "The term of this Sales Contract shall commence upon the date of commencement of the term of that certain Operator's Lease executed concurrently herewith by and between the parties hereto and shall end upon the date of expiration or date of any other termination of said lease."

Exhibit 17-A. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 11-45, which is plaintiff's *Exhibit 4-A*, except that this instrument is executed on August 2, 1946, by and between Richfield Oil Corporation, as Lessor, and D. W. Colmery and Helene P. Colmery, husband and wife, as Lessees, for a period of twenty years, less one day.

This lease relates to the Kalliwoda station at Las Tunas Drive and Live Oaks Avenue, Arcadia, California.

Exhibit 17-B. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C*, except that this instrument is executed on March 28, 1951, by and between Richfield Oil Corporation, as Seller, and D. W. [fol. 529] Colmery and Helene P. Colmery, husband and wife, as Buyers, and covering the period commencing March 1, 1951 to and including December 30, 1967. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	14,500 gallons	25,000 gallons
Lubricating oils	75 gallons	225 gallons
Greases	60 pounds	225 pounds

This contract relates to the Kalliwoda station and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 17-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D*, except that this instrument is executed on March 28, 1951, by and between Richfield Oil Corporation, as Lessor, and D. W. Colmery and Helene P. Colmery, husband and wife, as Lessees, for the term commencing March 1, 1951, to and including December 30, 1967. The lease also contains the following inserted paragraph:

> "Lessee shall be privileged to terminate this lease at any time during the term hereof by means of a prior 30 day notice in writing to Lessor."

This lease relates to the Kalliwoda station.

Exhibit 18. Printed form 783, Operator's Sales Contract 3-C, print date of 1-46, which is like plaintiff's *Exhibit* [fol. 530] *4-B*, except that this instrument is executed on December 11, 1946, by and between Richfield Oil Corporation, as Seller, and D. W. Colmery and Helene P. Colmery, husband and wife, as Buyers, for a term of fifteen years, less one day. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	5,000 gallons
Lubricating oils	50 gallons
Greases	50 pounds

The contract contains reference to Buyers' service station at Las Tunas Drive and Baldwin Avenue, Arcadia, California, (known as the "Land Escrow" station), and also contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by

and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 18-A. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 11-45, which is plaintiff's *Exhibit 4-A*, except that this instrument is executed on December 11, 1946, by and between Richfield Oil Corporation, as Lessor, and D. W. Colmery and Helene P. Colmery, husband and wife, as Lessees, for a period of fifteen years, less one day. This lease relates to the Land Escrow station.

Exhibit 18-B. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C*, except that this instrument is executed on March 28, 1951, by and be-
[fol. 531] tween Richfield Oil Corporation, as Seller, and D. W. Colmery and Helene P. Colmery, husband and wife, as Buyers, for the period commencing March 1, 1951, and ending August 30, 1962. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	11,500 gallons	20,000 gallons
Lubricating oils	65 gallons	200 gallons
Greases	50 pounds	200 pounds

This contract relates to the Land Escrow station and contains the following inserted paragraph:

"In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto, this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 18-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D*, except that this instrument is executed on March 28, 1951, by and between

Richfield Oil Corporation, as Lessor, and D. W. Colmery and Helene P. Colmery, husband and wife, as Lessees, for the period commencing on March 1, 1951, and ending on August 30, 1962. The lease contains the following inserted paragraph:

> "Lessee shall be privileged to terminate this lease at any time during the term hereof by means of a prior 30 day notice in writing to Lessor."

This lease relates to the Land Escrow station.

Exhibit 19. This exhibit comprises the following:

[fol. 532] Printed form 337, Sales Contract, print date of 6-40, which is like plaintiff's *Exhibit 5-B*, except that this instrument is executed on December 2, 1941, by and between Richfield Oil Corporation, as Seller, and Gordon McRae, as Buyer, for the period commencing on January 4, 1942, and extending to and including January 3, 1944. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	90,000 gallons	125,000 gallons
Lubricating oils	2,000 gallons	3,000 gallons
Greases	2,000 pounds	3,000 pounds

Reference is made to Buyer's service station located at Main and Marine Streets, Ocean Park, California.

Exhibit 19-A. This exhibit comprises the following:

Printed form 59, Painting Agreement, print date of 4-41, which is like plaintiff's *Exhibit 5-C*, except that this instrument is executed on December 2, 1941, by and between Richfield Oil Corporation and Gordon McRae, as Dealer. The agreement makes reference to Sales Contract dated December 2, 1941, entered into between Richfield Oil Corporation, as Seller, and Gordon McRae, as Buyer, such contract being that identified as plaintiff's *Exhibit 19*. Said Painting Agreement also provides in paragraph numbered 2 thereof a minimum of $270.00 and a maximum of $275.00 to be expended as the cost for the necessary work, labor

and materials to paint the station identified in the agreement and located at Main and Marine Streets, Ocean Park, California.

Exhibit 22. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 11-45, which is plaintiff's Exhibit 4-A, except that this instrument is executed on June 18, 1946, by and between [fol. 533] Richfield Oil Corporation, as Lessor, and Raymand R. Mathis, as Lessee, for the period commencing July 1, 1946, and ending June 29, 1956, unless the lease shall be sooner terminated in a manner therein provided. The lease covers service station property located in the City of Reedville, County of Washington, State of Oregon.

Exhibit 22-A. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4-B*, except that this instrument is executed on June 18, 1946, by and between Richfield Oil Corporation, as Seller, and Raymond R. Mathis, as Buyer, for the period commencing July 1, 1946, and ending June 29, 1956. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	4,500 gallons
Lubricating oils	90 gallons
Greases	350 pounds

The contract makes reference to Buyer's service station at Reedville, Oregon, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 22-B. This exhibit comprises the following:

Printed form 362, Service Station Lease 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4*, except that this

instrument is executed on June 18, 1946, by and between Raymond R. Mathis and Winnefred I. Mathis, his wife, as [fol. 534] Lessors, and Richfield Oil Corporation, as Lessee, for the period commencing July 1, 1946, and ending June 30, 1956.

Exhibit 22-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D*, except that this instrument is executed on October 21, 1948, by and between Richfield Oil Corporation, as Lessor, and Raymond R. Mathis, as Lessee, for the period commencing November 1, 1948, to and including June 29, 1956, unless the lease be sooner terminated in the manner therein provided. The lease covers property located in the City of Reedville, County of Washington, State of Oregon.

Exhibit 22-D. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C*, except that this instrument is executed on October 21, 1948, by and between Richfield Oil Corporation, as Seller, and Raymond R. Mathis, as Buyer, for the period commencing November 1, 1948, and ending June 29, 1956. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	6,500 gallons	9,000 gallons
Lubricating oils	90 gallons	150 gallons
Greases	350 pounds	500 pounds

The lease refers to Buyer's service station located in Reedville, Oregon, and the instrument contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice [fol. 535] or action on the part of either party hereto."

Exhibit 22-E. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D*, except that this instrument is executed on December 23, 1950, by and between Richfield Oil Corporation, as Lessor, and Raymond R. Mathis, as Lessee, covering premises in the City of Reedville, County of Washington, State of Oregon, for the term commencing December 1, 1950 and ending June 29, 1956.

Exhibit 22-F. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C*, except that this instrument is executed on December 23, 1950, by and between Richfield Oil Corporation, as Seller, and Raymond R. Mathis, as Buyer, for the period commencing December 1, 1950, and ending June 29, 1956. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	5,264 gallons	9,000 gallons
Lubricating oils	53 gallons	90 gallons
Greases	53 pounds	90 pounds

The contract makes reference to Buyer's service station in Reedville, in the State of Oregon, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

[fol. 536] *Exhibit 23.* This exhibit comprises the following:

Printed form 542, Service Station Lease, print date of 9-41, which is like plaintiff's *Exhibit 1-B*, except that this instrument is executed on January 9, 1942, by and between Richfield Oil Corporation, as Lessor, and James T. Smith, as Lessee, covering premises located at Imperial Highway and Figueroa Street, in the City of Los Angeles, County of

Los Angeles, State of California. The commencement date of the lease is January 12, 1942. The lease provides for a rental equal to $70.00 per month and excludes any rental computed on a gallonage basis.

Printed form 542-F, rider to the Service Station Lease, print date of 4-42, which is like plaintiff's *Exhibit 1-F*, except that this instrument is executed on July 14, 1942, by and between Richfield Oil Corporation, as Lessor, and James T. Smith, as Lessee. This instrument is a rider to the above described printed form 542, Service Station Lease, print date of 9-41, and provides that effective on July 1, 1942, the rental covering the premises described therein shall be $35.00 per month and no more.

Printed form 542-F, rider to the Service Station Lease, print date of 4-42, which is like plaintiff's Exhibit 1-F, except that this instrument is executed on February 10, 1943, by and between Richfield Oil Corporation, as Lessor, and James T. Smith, as Lessee. This instrument is a rider to the above described form 542, Service Station Lease, print date of 9-41, and provides that effective on January 1, 1943, the rental covering the premises described therein shall be $1.00 per month and no more.

Printed form 542-F, rider to the Service Station Lease, [fol. 537] print date of 4-42, which is like plaintiff's *Exhibit 1-F*, except that this instrument is executed on February 29, 1944, by and between Richfield Oil Corporation as Lessor, and James T. Smith, as Lessee. This instrument is a rider to the above described form 542, Service Station Lease, print date of 9-41, and provides that effective on March 1, 1944, the rental covering the premises described therein shall be $100.00 per month and no more.

Printed form 542-E, rider to the Service Station Lease, print date of 4-42 which is like plaintiff's *Exhibit 1-C*, except that this instrument is executed on March 21, 1944, by and between Richfield Oil Corporation, as Lessor, and James T. Smith, as Lessee. This instrument is a rider to the above described form 542, Service Station Lease, print date of 9-41, and provides that effective on April 1, 1944, the rental for the premises described therein shall be $100.00 per month, plus 1¢ per gallon of gasoline received by the Lessee on the demised premises in excess of 10,000 gallons.

Exhibit 24. This exhibit comprises the following:

Printed form 362, Service Station Lease 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4,* except that this instrument is made and entered into on April 23, 1946, by and between Howard F. Smith and Mary Smith, his wife, as Lessors, and Richfield Oil Corporation, as Lessee, covering property located within the City of Vancouver, County of Clark, State of Washington, for the period commencing May 1, 1946, and ending April 30, 1951.

Exhibit 24-A. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 11-45, which is plaintiff's *Exhibit 4-A,* except that this in-
[fol. 538] strument is executed on April 23, 1946, by and between Richfield Oil Corporation, as Lessor, and Howard F. Smith, as Lessee, for certain premises located within the City of Vancouver, County of Clark, State of Washington, for the period commencing May 1, 1945 and ending April 29, 1951, unless sooner terminated in the manner provided therein.

Exhibit 24-B. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 1-46, which is like plaintiff's *Exhibit 4-B,* except that this instrument is executed on April 23, 1946, by and between Richfield Oil Corporation, as Seller, and Howard F. Smith, as Buyer, covering the period commencing May 1, 1946 and ending April 29, 1951. The table entitled "Minimum" in the printed form has not been filled in. The contract refers to Buyer's service station at Fourth Plain Road, Vancouver, Washington, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Exhibit 24-C. This exhibit comprises the following:

Printed form 668, Operator's Lease 3-C, print date of 9-48, which is plaintiff's *Exhibit 4-D,* except that this in-

strument is executed on October 21, 1948, by and between Richfield Oil Corporation, as Lessor, and Howard F. Smith, as Lessee, covering premises in the City of Vancouver, County of Clark, State of Washington, for the period commencing November 1, 1948, and ending April 29, 1951, unless sooner terminated in the manner provided therein.

[fol. 539] *Exhibit 24-D.* This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, which is plaintiff's *Exhibit 4-C,* except that this instrument is executed on October 21, 1948, by and between Richfield Oil Corporation, as Seller, and Howard F. Smith, as Buyer, for the period commencing November 1, 1948 and ending April 29, 1951, with reference made to Buyer's service station at Fourth Plain Avenue, Vancouver, Washington. The quantity provision of the printed form is as follows:

	Minimum	Maximum
Gasolines	4,000 gallons	6,000 gallons
Lubricating oils	120 gallons	150 gallons
Greases	60 pounds	100 pounds

The contract also includes the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

[fol. 540] Section II—Defendant's Exhibits

Exhibit A. That portion of this exhibit which comprises the following:

Index pages 8, 9, 10, 11, 12 and 13.

Printed forms of various print dates, briefly described as follows:

(a) Form 542, Service Station Lease, and related form 542-A, its Exhibit "A"; form 542-E and form 542-F, its

rental riders; and form 1095, Truck Service Station Lease; all of which were or are used in connection with L. O. service stations and which are, or are like, plaintiff's Exhibits 1, 1-A to 1-G, inclusive, and 2;

(b) Form 306, Service Station Lease 2-B; form 494, Sublease; form 493-A, Consent to Assign; form 493, Assignment of Lease; form 398, Sales Contract; form 362 Service Station Lease 3-C; form 668, Operator's Lease 3-C; and form 783, Operator's Sales Contract 3-C; all of which were or are used in connection with the 2-B or 3-C type of service station and which are, or are like, plaintiff's Exhibits 3, 3-A to 3-D, inclusive, and 4 to 4-D, inclusive;

(c) Form 543, Sales Contract; form 337, Sales Contract; Agreement to Amend, Schedule "A" (to form 337); form 123-C, Painting Agreement; and form 59, Painting Agreement, all of which were or are used in connection with dealer stations and which are, or are like, plaintiff's Exhibits 5 to 5-I, inclusive.

Exhibit II. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date 8-40, being like plaintiff's *Exhibit 4-B*, except that this instrument is executed on December 7, 1945, by and between Richfield Oil Corporation, as Seller, and James Moore, as [fol. 541] Buyer, for the period commencing October 1, 1945, and ending March 30, 1951. The quantity provision of the printed form is as follows:

	Minimum
Gasolines	10,000 gallons
Lubricating oils	350 gallons
Greases	175 pounds

The contract refers to Buyer's service station at 56 North Riverside Avenue, Medford, Oregon, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Printed form 668, Operator's Lease 3-C, print date of 11-45, being plaintiff's *Exhibit 4-A*, except that this instrument is executed on December 7, 1945, by and between Richfield Oil Corporation, as Lessor, and James Moore, as Lessee, for the period commencing October 1, 1945 and ending March 30, 1951, unless sooner terminated in the manner provided therein.

Exhibit H-1. This exhibit comprises the following:

Printed form 783, Operator's Sales Contract 3-C, print date of 8-48, being plaintiff's *Exhibit 4-C*, except that this instrument is executed on February 10, 1950, by and between Richfield Oil Corporation, as Seller, and James Moore, as Buyer, for the period commencing on February 1, 1950 and ending on March 30, 1951. The quantity provision of the printed form is as follows:

[fol. 542]

	Minimum	Maximum
Gasolines	12,219 gallons	14,663 gallons
Lubricating oils	367 gallons	440 gallons
Greases	183 pounds	220 pounds

The contract refers to Buyer's service station at 56 North Riverside Drive, Medford, Oregon, and contains the following inserted paragraph:

> "In the event of any termination of that certain Operator's Lease executed concurrently herewith by and between the parties hereto this Operator's Sales Contract shall automatically terminate without notice or action on the part of either party hereto."

Printed form 668, Operator's Lease 3-C, print date of 9-48, being plaintiff's *Exhibit 4-D*, except that this instrument is executed on February 10, 1950, by and between Richfield Oil Corporation, as Lessor, and James Moore, as Lessee, for the period commencing on February 1, 1950 and ending on March 30, 1951, unless sooner terminated in the manner provided therein.

Exhibit H-2. This exhibit comprises the following:

Printed form 337, Sales Contract, print date of 8-48, being plaintiff's *Exhibit 5-D*, except that this instrument is executed on January 25, 1951, by and between Richfield Oil Corporation, as Seller, and James F. Moore, as Buyer, for the period commencing April 1, 1951 and ending March 31, 1953. Reference is made in the contract to Buyer's service station at 56 North Riverside Drive, Medford, Oregon. The quantity provision of the printed form is as follows:

[fol. 543]	Minimum	Maximum
Gasolines	12,538 gallons	18,000 gallons
Lubricating oils	125 gallons	180 gallons
Greases	125 pounds	180 pounds

Exhibit O-2. This exhibit comprises the following:

Chart of Authorized Signatures, effective February 15, 1939, which is like defendant's Exhibit O-1, except that the latter is effective March 1, 1941.

Exhibit P-1. This exhibit comprises the following:

A certification dated April 11, 1951, by Cleve B. Bonner, Secretary of Richfield Oil Corporation, of the adoption by Resolution of the Board of Directors of said corporation, on June 26, 1946, of the capital expenditure budget represented by defendant's Exhibit P.

Exhibit AE. This exhibit comprises the following:

Contract between Defense Supplies Corporation and Richfield Oil Corporation, dated February 3, 1942, which is a part of Request for Admission Under Rule 36, dated October 13, 1950.

Exhibit AE-1. This exhibit comprises the following:

Contract between Defense Supplies Corporation and Richfield Oil Corporation, dated February 20, 1943, which is a part of Request for Admission Under Rule 36, dated October 13, 1950.

Exhibit AE-2. This exhibit comprises the following:

A telegram dated December 2, 1941, from Ralph K. Davies, Deputy Petroleum Coordinator, addressed to C. S. Jones, President, Richfield Oil Corporation, concerning expansion of 100 octane aviation gasoline refining capacity, which is part of Request for Admission Under Rule 36, dated October 13, 1950.

Exhibit AE-3. This exhibit comprises the following:

[fol. 544] A telegram dated September 3, 1943, from George L. Parkhurst, Chief, New Facilities and Economics Section—Refining Division, to E. W. Isom, Sinclair Refining Company, concerning Certificate of Necessity Application for Richfield Oil Corporation 100 octane aviation gasoline project, which is a part of Request for Admission Under Rule 36, dated October 13, 1950.

[fols. 545-550] Proofs of Service of Appeal Papers—
(Omitted in printing)

[fol. 551] [File endorsement omitted.]

In United States District Court

[Title omitted]

Stipulation for Release of Exhibits and Order Thereon—
Filed September 13, 1951

It is hereby stipulated by and between the parties to the above entitled action by and through their respective counsel that all of the exhibits therein introduced by either party in evidence at the trial of said action and now in the custody of the Clerk of the United States District Court for the Southern District of California, Central Division, may be released by said Clerk and forwarded to the Clerk of the Supreme Court of the United States for the purpose of

[fol. 552] using the same in preparation of the record on appeal.

Dated: September 6, 1951.

William C. Dixon, Special Assistant to the Attorney General, By William C. Dixon, Attorney for Plaintiff.

William J. DeMartini, Robert E. Paradise, By William J. DeMartini, Attorneys for Defendant.

So ordered.

September 10, 1951.

Leon R. Yankwich, United States District Court Judge.

[fol. 552a] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 552b-552c] Supreme Court of the United States

October Term, 1951

No. 395

[File endorsement omitted.]

[Title omitted]

Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed October 26, 1952

Pursuant to Rule 13, paragraph 9 of the Revised Rules of the Supreme Court of the United States, Richfield Oil Corporation, Appellant in the above cause, hereby designates and adopts its Assignment of Errors as its statement of the points to be relied upon and designates for printing by the Clerk of this Court the whole of the record as filed as necessary for the consideration of this cause.

Dated: October 23, 1951.

Robert E. Paradise, Wm. J. DeMartini, Counsel for Appellant.

[fol. 552d] SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 395

[Title omitted]

STIPULATION DESIGNATING PORTIONS OF THE TRANSCRIPT TO BE EXCLUDED FROM THE PRINTED RECORD—Filed November 14, 1951

It is hereby stipulated by and between the parties hereto, through their respective counsel, that the following portions of the Transcript on Appeal shall be excluded from the printed record on appeal and the Clerk of the Supreme Court is hereby authorized to omit said portions from said printed record:

(a) Plaintiff's Exhibits 6, 6A, 6-B, 6-C, 6-D, 6-E, 6-F, 17-D and 18-D, and

(b) Defendant's Exhibits G, P (all except first page) and Q.

It is understood that the portions excluded remain as a part of the Transcript on Appeal and that notwithstanding the exclusion from the printed record such excluded portions, or any part thereof, may be referred to by either party in their briefs or oral arguments or in any proceed-
[fols. 552e-552f] ings incident to this appeal.

Dated: November 9, 1951.

Philip B. Perlman, Solicitor General of The United States, Department of Justice.

Robert E. Paradise, Wm. J. DeMartini, Counsel for Appellant.

* * * * * * *

[fol. 552g] SUPREME COURT OF THE UNITED STATES

No. 395, October Term, 1951

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—November 13, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Clark took no part in the consideration or decision of this question.